117-130

RECORD, CASE No. 13,267.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 211.

ORA HALEY, PLAINTIFF IN ERROR,

vs.

LEWIS H. BREEZE, TREASURER OF ROUTT COUNTY, COLORADO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

FILED OCTOBER 11, 1888.

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1 Pleas before the honorable the supreme court of the State of Colorado.

STATE OF COLORADO, *ss:*

Be it remembered that heretofore and on, to wit, the 11th day of August, A. D. 1887, came the appellant, L. H. Breeze, and filed in the office of the clerk of the supreme court of the State of Colorado a duly certified transcript of the record and proceedings of a certain cause lately pending in the district court of Pitkin county and State aforesaid, wherein Ora Haley was plaintiff and L. H. Breeze was defendant, and which said cause was brought into said supreme court upon appeal from the judgment of said district court entered in said cause, and which said transcript of record and their assignments of error thereto appended is in words and figures as follows, to wit:

2 STATE OF COLORADO, } *ss:*
County of Pitkin, }

In the District Court.

ORA HALEY, Plaintiff, }
vs.
LOUIS H. BREZEE, Defendant. }

Plaintiff complains and alleges—

First. That the assessor of Routt county, Colorado, listed for assessment, as it is said, the plaintiff's property for taxation for the fiscal year 1884, and thereby made it appear that plaintiff was possessed of property for taxation in said county for said year of the value of one hundred and seventy-five thousand one hundred dollars, as it is claimed and is alleged by defendant. The alleged schedule returned by said assessor is in the following words and figures, to wit:

Second. That said assessment was for too many cattle and horses and for too much property in said county for said year, and that plaintiff's assessment was too high by many thousands of dollars.

Third. That said assessment was founded upon no tax-list made and returned by plaintiff to said assessor to found an assessment upon.

Fourth. That said assessment as it was made to appear and as it now remains of record as extended and found upon the assessment-roll of the county records for and in said county for said year upon said property appears as follows, to wit:

3 Name: Haley, Ora.
Description of lands: Six ¼ sections.
No. acres: 960.
Value of lands: 2,880.
Value of improvements: 900.
Value of improvements on public lands: 800.

No. of horses: 165.
Horses—value: 6,845.
Mules:
No.: 2. Value: 100.
Cattle:
No.: 8,200. Value: 163,000.
Carriages:
No.: 3. Value: 200.
Capital invested in merchandise: 200.
Amount of all property: 175.
Total: 175,100.
Lay.

STATE OF COLORADO, } ss:
County of Routt, }

I, I. G. Voice, county clerk and recorder of Routt county, Colorado, do hereby certify that I have carefully compared the above with the assessment-roll for the year 1884 for said county and State, and that the above is a precise, exact, and identical copy of said roll of the assessment of said Haley for said year, and that it is a full, true, and exact copy of Ora Haley's assessment for said year as now remains of record in my office.

Witness my hand and official seal this 20th day of April, 1887.

[SEAL.] I. G. VOICE,
Clerk and Recorder for Routt County, Colo.

4 as will more fully appear by reference to the records with the clerk and recorder of said county.

Fifth. That, founded upon said assessments and none other, an alleged tax was laid for said year in favor of said county, which, on January 1, 1885, amounted to four thousand two hundred and forty-eight dollars and fifty-nine cents.

Sixth. That prior to and during the year 1884 said Routt county, Colorado, had but two acting and qualified county commissioners. The third commissioner, Solomon Routt, failed and refused to qualify or act, by reason of which there were but two county commissioners qualified and acting for said county during the year 1884, to wit, W. R. Walker and David Miller.

Seventh. That no notice of the meeting of the board of equalization was posted or published or given in and for said county for the year 1884, as by reference to the records of said county will more fully appear.

Eighth. That the assessor of said county did not assess plaintiff's property for said year, but that said so-called assessment was made at and during the July meeting of an alleged board of county commissioners and in their presence and under their direction.

Ninth. That the defendant has been and is acting in and filling the office of county treasurer for and in said county; that to satisfy said alleged tax the defendant is threatening to make distraint of plaintiff's stock, consisting of horses and cattle, which roam over and upon the grazing grounds of said county, and to drive them from

the stock ranges in said county and round them up and take possession of them and offer them at public sale to the highest bidder or bidders, and to continue such sale until he shall realize enough to satisfy said alleged tax, and the plaintiff has reasons to believe and does believe that the defendant will immediately proceed to put his threats into execution unless prevented by the order of this honorable court.

Tenth. That plaintiff is a ranchman and owns several hundred head of stock, consisting of horses and cattle, which graze and roam over the wild and unseated lands of Routt county and adjoining grazing grounds, all of which stock depend for identification and mark of ownership upon his brand, and that this brand is on more than five thousand head of said stock, ranging and roaming in Routt county as aforesaid, and that the sale of several hundred head of said stock bearing the plaintiff's brand as aforesaid to divers purchasers in said Routt and adjoining counties will do plaintiff irreparable injury by making it possible and allowing purchasers of said stock to scatter all over the country and add to their own herds and bunches of stock plaintiff's stock, bearing plaintiff's brand as aforesaid, and that by this means the value and usefulness of plaintiff's brand in identifying, rounding up, and managing plaintiff's stock will be nearly or quite destroyed.

Eleventh. That said Routt county is a newly organized county, and that its fiscal resources are not great, certain, nor well established, and that plaintiff has paid for several years past nearly one-third of all taxes collected by said county except for said year 1884.

Twelfth. That said Breeze is insolvent, as plaintiff verily believes and therefore charges the fact to be, and that said Breeze cannot respond in damages and satisfy judgments that plaintiff could establish against him at law for seizure and sale of property under illegal and void tax proceedings to satisfy said alleged tax, and *and* also upon like information and belief charge the fact to be that the sureties of said Breeze *is* insolvent and are unable to respond in damages for any judgments that might be established against them in the premises.

Thirteenth. That the sale of several hundred head of plaintiff's said stock he believes, has reason to believe, and therefore charges the fact to be, will be to many and divers purchasers scattered over Routt and adjoining counties, and that plaintiff, for any remedy that will then be left to him, will have to resort to many and divers suits at law against many persons living miles apart in a county that has not to exceed seven hundred inhabitants and which has at least ten thousand square miles, and that after said sale the only remedy and recourse of plaintiff will be to institute suits at law against purchasers at said tax sales and to recover judgments at law against the defendant and purchasers at said sale for the conversion and loss of said stock, and that this remedy will involve a multiplicity of suits, and that remedies at law are inadequate and insufficient to protect plaintiff's rights, and that he will be unable in a court of law to prove the value of the

stock and procure evidence as to who were the purchasers, as he verily believes.

Fourteenth. That at any sale of said stock plaintiff believes, has reason to believe, and therefore charges the fact to be, that said stock will be sacrificed, and will be sold to many and divers persons for not more than one-third or one-fo-rth of its value, for the reason that said stock will be forced upon a dull market, and in a country that is but sparsely populated and contains but few persons who are able to buy stock, and that it is widely known throughout said county and region that plaintiff denies the justice and validity of the tax and intends to resist the collection of said alleged taxes and all proceedings thereunder. Plaintiff further avers that on June 29th, 1887, he was credibly informed by William Murphy, an employé of this plaintiff's, that the defendant had proceeded to round up and take possession of a large number of beef steers and to proceed to advertise the same for sale to satisfy said alleged tax,
7 wherefore plaintiff avers the fact so to be, and that defendant is now proceeding to round up and take possession of a large number of beef steers, now fattening for market, and dispose of them to divers purchasers as stated herein, and that the disturbance of said steers upon their range will greatly damage them and reduce them in flesh and so diminish their value; that if plaintiff took the required time to serve notice of this application it would so delay proceedings that said sale would actually take place before said proceedings could be stayed; that on June 18th, 1887, defendant was notified in writing that if he made any attempt to take possession of said stock that this application would be made for an injunction.

Fifteenth. That the expenses attending a round up, taking possession of, holding and herding said stock, awaiting the necessary time to make a valid sale, will be very considerable, and that plaintiff believes, has reason to believe, and therefore charges the fact to be that said expenses will not be less than one hundred dollars per day.

Sixteenth. That by reason of the above premises plaintiff is remediless in a court of law and can only be protected in a court of equity.

Wherefore plaintiff prays for a temporary writ of injunction, to be directed to the said defendant, his agents, employés, and deputies, enjoining and restraining them and each of them from driving plaintiff's said stock from off and away from the ranges, and from rounding them up and herding them together, and from taking and keeping possession of them, and from offering said stock or any part thereof at any tax sale, to satisfy said alleged taxes for the year 1884, as aforesaid, and that each of them be restrained and enjoined from interfering with the plaintiff's property until the further order of this court.

By JOHN A. COULTER AND
W. T. HUGHES,
Att'ys for Plaintiff.

8 STATE OF COLORADO, } ss:
County of Pitkin, }

Ora Haley deposes and says that he is the plaintiff in the above-entitled cause of action; that he has heard read the foregoing complaint, and that he knows the contents thereof, and that the same are true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

ORA HALEY.

18 June.

JEFF. McAMLEY,
County Judge.

Subscribed and sworn to before me this July 1st, 1887.
JOHN M. BEACH,
Clerk Dis. Court.

At chambers of district court, 9th judicial district.

The clerk of district court in and for Pitkin county will issue a temporary injunction herein as prayed for in complaint, provided the plaintiff shall file with said clerk an undertaking to defendant in the sum of ten thousand dollars, conditioned as required by law.

Done at Aspen, Colorado, this 1st day of July, A. D. 1887.
THOMAS A. RUCKER,
District Judge.

Endorsed as follows: Exhibit "A." No. 496. Ora Haley *vs.* Lewis H. Breeze. Complaint for injunction. Filed July 1, 1887. John M. Beach, clerk. Cr. plaintiff, $10.00. W. T. Hughes, 19 Tabor block, Denver, att'y for pl't'ff.

9 STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District within and for Pitkin County, State of Colorado.

ORA HALEY, Plaintiff,
vs.
LOUIS H. BREEZE, Defendant. } Injunction.

The people of the State of Colorado to Louis H. Breeze, send greeting:

The above-named plaintiff having filed his complaint in our district court against the above-named defendant, praying for an injunction against said defendant requiring him to refrain from certain acts in said complaint and hereinafter more particularly mentioned, on reading the said complaint in this action, duly verified on oath by Ora Haley, and it satisfactorily appearing to Hon. Thomas A. Rucker, judge of said court, therefrom that it is a proper case for

an injunction, and that sufficient grounds exist therefor, and the necessary and proper undertaking having been given :

We, therefore, in consideration thereof and of the particular matters in the said complaint set forth, do strictly command you and each and every of you that until the further order of the said court you and each of you, your and each of your servants, agents, attorneys, employés, and all persons acting under the control, authority, or direction of you or either of you, Louis H. Breeze, do absolutely refrain from and desist from driving the plaintiff's stock from off and away from the ranges and from rounding them up and herding them together and from taking and keeping possession of them and from offering said stock or any part thereof at any tax sale to satisfy alleged taxes for the year 1884, and that you, your agents, employés, and deputies, be restrained and enjoined from interfering with the plaintiff's property until the further order of this court.

10 Witness John M. Beach, clerk of said court, and the seal thereof, at Aspen aforesaid, this 1st day of July, A. D. 1887.

[SEAL.] JOHN M. BEACH, *Clerk.*

STATE OF COLORADO, } *ss :*
County of Routt, }

I do hereby certify that I have duly executed the within writ on this 8th day of July, A. D. 1887, by reading to Louis H. Breeze the within writ.

THOMAS MORGAN, *Sheriff,*
By F. M. JONES, *Under-Sheriff.*

Endorsed as follows : Exhibit " B." No. 496. District court, Pitkin county. Ora Haley, plaintiff, *vs.* Louis H. Breeze, defendant. Injunction. Plaintiff's fees : Service, .75 ; mileage, 24.00 ; return, .75 ; total, 25.50. Filed in the district court this 19th day of July, A. D. 1887. John M. Beach, clerk. T. S. Hughes, attorney for plaintiff.

11 STATE OF COLORADO, } *ss :*
County of Pitkin, }

In the District Court of the Ninth Judicial District in and for the County of Pitkin and State of Colorado.

ORA HALEY, Plaintiff,
vs.
LOUIS H. BREEZE, Defendant. } Answer of Defendant.

The defendant now comes, by John W. Breeze and Lemuel L. Breeze, his attorneys, and answers the plaintiff's complaint filed in above cause and admits—

I. That the assessor of Routt county, Colorado, did list for assessment the plaintiff's property for taxation for the year A. D. 1884, and that the total valuation thereof as fixed by the assessor was the sum of one hundred and seventy-five thousand one hundred dollars, as alleged by plaintiff.

II. That from all the information defendant can obtain by inquiry from men who are more or less familiar with the number of cattle and horses owned by plaintiff in Routt county, Colorado, and subject to taxation in said county for the year A. D. 1884 defendant believes that said assessment was not for too many cattle and horses, and upon information and belief denies that plaintiff was by said assessment assessed with or for too many cattle and horses and too much property, and denies that plaintiff's said assessment was too high by many thousands of dollars or any amount whatever.

III. Defendant admits that said assessment was founded upon no tax-list made and returned by plaintiff to said assessor, but alleges the fact to be that said plaintiff neglected and refused to list his property in Routt county, Colorado, for taxation for the year A. D. 1884, and that the assessor listed the same for him, as was his
12 duty to do, upon failure of plaintiff to return his property for taxation.

IV. Defendant admits that the amount of plaintiff's taxes as assessed against him for the year A. D. 1884 amounted on the first day of January, A. D. 1885, to the sum of four thousand two hundred and forty-eight dollars and fifty-nine cents, as alleged by plaintiff in the fifth paragraph of his complaint, but denies that there was none other list or assessment upon which plaintiff's taxes were founded, and alleges that the assessor of Routt county listed said plaintiff's property for said year of 1884 upon a regular assessment schedule in manner and form as all the others tax-payers were listed by the assessor who failed to list their own property, as required by law.

V. Defendant denies that prior to and during the year A. D. 1884 that said Routt county, Colorado, had but two acting and qualified county commissioners, and denies that any vacancy in the board of county commissioners of Routt county occurred or existed during the year A. D. 1884, and denies that Solomon Rouff was the third county commissioner for said county for and during the year A. D. 1884, and denies that by reason of Solomon Rouff's failure and refusal to qualify or act as commissioner of said county for the year A. D. 1884 there were only two commissioners qualified and acting in said county, and that their names were David Miller and W. R. Walker; but defendant alleges the fact to be that the board of county commissioners of Routt county, Colorado, for the year A. D. 1884 consisted of W. R. Walker, David Miller, and A. H. Bassett, comprising a full board, and who were duly elected, qualified, and acting commissioners in and for the county of Routt and State of Colorado; that it appears of record in the office of the county clerk and recorder of Routt county, in the State of Colorado, that one Solomon Rouff was a candidate for election to the office of county commissioner of Routt county, Colorado, at the election held in No-
13 vember, A. D. 1884, and was duly elected to succeed said A. H. Bassett, whose time expired on the second Tuesday of January, A. D. 1885.

VI. Defendant denies, upon information and belief, that no notice of the meeting of the board of equalization was posted or published or given in and for said county of Routt for the year 1884.

VII. Defendant denies that the assessor did not assess plaintiff's property for said year of 1884, but alleges the fact to be that the assessor did assess plaintiff's property for the year A. D. 1884.

VIII. Defendant admits that he has been and still is acting as treasurer of Routt county, and is the duly elected, qualified, and acting treasurer of said county, and has been since the second Tuesday in January, A. D. 1884, and is now serving his second term as treasurer of said county of Routt.

IX. Defendant denies that to seize and sell plaintiff's horses and cattle that plaintiff will suffer irreparable injury, and denies that plaintiff's injury would be any greater from having his cattle and horses sold upon distress for taxes at public auction than it would be if sold by the sheriff at public auction upon an execution issued upon a judgment at law, and denies that he is insolvent, and denies that his bondsmen are insolvent, and denies that the county of Routt, whose officer defendant is, is insolvent, and denies that plaintiff will be able to recover or establish any judgment against this defendant or his bondsmen for discharging his duty under the statute and the tax warrant issued to him commanding him, as such treasurer, to collect the said taxes from plaintiff for the year A. D. 1884, and denies that plaintiff can resort to divers lawsuits against purchasers of his property sold for taxes due the county of Routt and State of Colorado, and denies that plaintiff can maintain suits at law against the defendant and the purchasers of any stock sold for taxes under and by virtue of a valid tax-warrant list and roll, and alleges that the same is expressly prohibited by statute, and denies that
14 such suits as these referred to in the thirteenth paragraph of plaintiff's complaint as aforesaid can be said to be a multiplicity of suits sufficient to invoke the aid of a court of equity to restrain the collection of taxes under a valid tax warrant; and defendant denies that the price which stock distrained for taxes will probably bring at forced sale furnishes any reason why the collection of public revenues should be enjoined.

X. Defendant denies that said tax is illegal and void, and denies that any proceeding in the listing and levy of said taxes was illegal and void.

XI. The defendant, further answering, alleges that the plaintiff had at the time of the commencement of this action and the issuance of the temporary injunction issued in this cause another action pending in the district court of the ninth judicial district in and for the county of Routt and State of Colorado against the defendant for the same cause set out in the bill filed in this cause and in the same language, with the exception of a few amendments interlined and interpolated in the bill, and that said action is still pending in said Routt county district court against defendant, and that portion of the summons in said cause showing or intended to show what the action was brought for is in the words following, to wit:

"This action is brought to enjoin you from seizing, distraining, and attempting to sell or interfere with the plaintiff's property or to make sale of the same to satisfy an alleged tax due Routt county for the

year 1884 and to enjoin said alleged tax or the collection of the same.

You are further notified that if you attempt to do any of the things feared and complained of in said complaint that plaintiff will immediately apply to the judge of said district if found therein, and if not found therein then to any district judge in said State, for a temporary writ of injunction."

W. T. HUGHES,
Plaintiff's Attorney.

Office address, 19 Tabor block, Denver, Colorado.

15 That this action cannot be maintained and the injunction issued in this cause continued in force while an older action in another county is pending for the same purpose and upon the same issue.

XII. The defendant, further answering, alleges that the assessment and validity of the taxes complained of in this action was and has been fully adjudicated in a suit brought by said plaintiff and against the defendant, as treasurer of Routt county, Colorado, in the district court of Clear Creek county, Colorado, and taken from said court to the supreme court of Colorado, and the opinion of the supreme court of Colorado, rendered upon the 30th day of April, A. D. 1887, holds and decides that the proceedings of the board of county commissioners and assessor, in the assessment of and levey of said taxes, were regular and valid, and that the assessment of plaintiff's property by the assessor of Routt county for the year 1884 in the manner it was done caused no injury to plaintiff and was made in "substantial compliance with the statute, so that its objects and purposes were sufficiently met," and that the regularity and validity of said taxes have been fully and finally adjudicated in said cause by the supreme court of Colorado in an action between the same parties and cannot now be readjudicated in a new action between the same parties upon the same allegations as in the original bill and upon the points in issue in said cause, and the former adjudication is a complete bar and estops plaintiff from prosecuting this cause, and that this cause cannot be maintained and the injunction herein must be dissolved and this cause dismissed.

XIII. The defendant, further answering, alleges that he is an officer of the county of Routt, in the State of Colorado, and resides in said county; that the cause for action, if any, in this case arose in the county of Routt and State of Colorado, and the plaintiff is not a resident of the State of Colorado, but lives and resides at Laramie City, in the State of Wyoming, and that the dis-
16 trict court of Pitkin county has no jurisdiction to try this cause and had no power to issue an injunction out of said court against a public officer in another county of the State of Colorado.

Wherefore defendant, having fully answered plaintiff's complaint, prays to be hence dismissed with his reasonable costs and damages

sustained and paid out, and that said injunction be dissolved and set aside and this cause dismissed.

JOHN M. BREEZE &
LEMUEL L. BREEZE,
Atty's for Defendant.

STATE OF COLORADO, }
County of Pitkin, } *ss:*

Lewis H. Breeze, being duly sworn according to law, deposes and says that he is the defendant in above cause; that he has read the foregoing answer and knows the contents thereof of his own knowledge, and that the same are true except as to the matters and things therein stated on information and belief, and as to those matters he believes them to be true.

LEWIS H. BREEZE.

Subscribed and sworn to before me this 25th day of July, A. D. 1887.

[SEAL.] JOHN M. BEACH, *Clerk.*

Endorsed as follows: Exhibit "C." In district court. 496. Original. Ora Haley *vs.* Lewis H. Breeze. Answer of defendant. Filed July 25th, 1887. John M. Beach, clerk. Cr. def't $2.50. John M. Breeze & Lemuel L. Breeze, att'ys for def't. Yampa, Colorado.

17 In Dist. C't, Pitkin Co.

ORA HALEY
vs.
LEWIS H. BREEZE. } Injunction.

Plaintiff will please take notice that defendant has appealed from the order made this day denying the motion for a dissolution of the injunction and for all parts thereof to the supreme court of the State of Colorado.

Dated July 27, 1887.

JOHN M. BREEZE,
Att'y for Defendant.

Received a copy of this notice this July 29th, 1887.

W. T. HUGHES,
Att'y for Pl't'ff.

Endorsed as follows: Exhibit "D." In district court. 496. Ora Haley *vs.* Lewis H. Breeze. Notice of appeal. Filed July 28th, 1887. John M. Beach, clerk. John M. Breeze, att'y for defendant and appellant.

18 STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

ORA HALEY, Plaintiff,
vs.
LEWIS H. BREEZE, Defendant. } Injunction.

Be it remembered that on the 27th day of July, A. D. 1887, at chambers of said district court, at Aspen, Pitkin county, Colorado, the following proceedings were had (*inter alia*) in the above-entitled cause:

ORA HALEY
vs.
LEWIS H. BREEZE. } Injunction.

On this 27th day of July, A. D. 1887, at chambers, at Aspen, Colorado, comes on to be heard motion of defendant (said motion being heretofore filed herein) to dissolve and hold for naught the injunction heretofore issued herein on, to wit, the 1st day of July, A. D. 1887, W. T. Hughes, Esq., with Porter Plumb, Esq., as counsel, appearing as attorneys for the plaintiff, and John M. Breeze, Esq., appearing as attorney for the defendant.

And, after hearing the arguments of counsel herein and due deliberation on the matters set forth in the pleadings, it is considered by the court that said motion be denied.

Wherefore it is ordered by the court that the motion of defendant for a dissolution of the injunction herein be, and hereby is, denied; to which order of the court the defendant then and there excepts.

(S'd) THOMAS A. RUCKER,
District Judge, Ninth Judicial District, Colorado.

Attest: JOHN M. BEACH, *Clerk.*

19 STATE OF COLORADO, } ss:
County of Pitkin, }

I, John M. Beach, clerk of the district court of the 9th judicial district of the State of Colorado within and for the county of Pitkin, do hereby certify that the above and foregoing writing is a full, true, and correct copy of the proceedings had and entered of record on a certain motion to dissolve injunction in a cause lately pending in said district court wherein Ora Haley was plaintiff and Lewis H. Breeze was defendant.

And I do further certify that the papers herewith transmitted and marked "Exhibits A to E," inclusive, are the original complaint, answer, writ of injunction, notice of appeal, and bill of exceptions filed in said district court in the above-named suit.

In testimony whereof I have hereunto set my hand and affixed

the seal of the said district court, at my office, in Aspen, in said county and State, this 5th day of August, A. D. 1887.

[SEAL.] JOHN M. BEACH,
Clerk District Court.

Costs on appeal, $5.60.

Endorsed as follows: In district court, Pitkin county, Colorado. Ora Haley *vs.* Lewis H. Breeze. Transcript. W. T. Hughes, att'y for plaintiff. John M. Breeze, att'y for defendant.

19½ And after and on, to wit, December 5th, A. D. 1887, came said appellant and filed in the office of the clerk of said supreme court his assignment of errors, in words and figures as follows, to wit:

20 In the Supreme Court of the State of Colorado.

LEWIS H. BREEZE, as Treasurer of Routt County, Colorado, Appellant,
vs.
ORA HALEY, Appellee. } No. 2098.

And now comes the said appellant, Lewis H. Breeze, county treasurer of the county of Routt, Colorado, by John M. Breeze, county attorney, and Daniel E. Parks, his attorneys, and says that in the record and proceedings aforesaid in this the within-entitled cause and also in giving the judgment aforesaid therein overruling and denying the motion therein made by the defendant below and appellant here to dissolve and hold for naught the injunction heretofore and on July 1st, A. D. 1887, issued in said cause aforesaid there is manifest error and in this, to wit:

The court or judge erred in overruling and denying said motion to dissolve said injunction, because—

First. An injunction does not lie to restrain the collection of a tax on personal property in the absence of allegations in the complaint that plaintiff's property was not subject to taxation or that the law under which the tax was assessed and levied was inoperative or void, showing wherein the same was inoperative or invalid.

Second. Because the allegations of plaintiff's complaint by which it is sought to allege irreparable injury are not sufficient to bring the case within the equity jurisdiction of the court.

Third. Because the allegations of the plaintiff's complaint were and are untrue and were and are wholly and entirely traversed and disproved by the sworn answer of the defendant and appellant Breeze made in said cause as well as by the evidence adduced
21 on the part of the defendant before the court and judge below in support of the said motion to dissolve said injunction, and the said court and judge should have given judgment dissolving said injunction.

Fourth. Because the plaintiff's complaint in said cause upon which said injunction was issued does not state facts sufficient to constitute a cause of action.

Fifth. Because the cause of action attempted to be alleged in the plaintiff's complaint has been heretofore fully adjudicated and determined by the supreme court of the State of Colorado in case of Lewis H. Breeze, appellant, *vs.* Ora Haley, appellee, No. 2015, at the April term, A. D. 1887, of said court, and the judgment of said supreme court in said cause is *res adjudicata* of all the matters and things alleged and set forth in said plaintiff's complai-t and involved in said cause.

Sixth. Because the plaintiff in his said complaint does not pray for or demand any final or perpetual relief in said action, said action being brought for temporary relief only, and equity will not take cognizance of such an action.

Seventh. Because, as appears by the eleventh allegation of the defendant's answer, which is not traversed by plaintiff, another action was pending and undetermined in the same jurisdiction for the same cause of action between the same identical parties when this the said action was commenced, which fact stood admitted by the appellee and defendant on the hearing of the said motion to dissolve.

Eighth. Because the judgment rendered therein should have been in favor of the defendant and against the plaintiff, sustaining said motion to dissolve said injunction and dissolving the same.

And the said appellant prays that the judgment and order aforesaid overruling and denying the appellant's and defendant's
22 motion to dissolve for the errors aforesaid and other errors in said record and proceedings aforesaid may be reversed, annulled, and altogether held for nought, and that he may be restored to all things which he has lost by occasion of said judgment, ruling, and decision of said court and judge, etc.

JOHN M. BREEZE,
D. E. PARKS,
Attorneys for Appellant.

Endorsed as follows: 2098. In the supreme court. Lewis H. Breeze *vs.* Ora Haley. Assignment of errors. Filed in supreme court Dec. 5, 1887. James A. Miller, clerk.

23 STATE OF COLORADO, } *ss:*
County of Pitkin, }

In the District Court of the Ninth Judicial District in and for the County of Pitkin and State of Colorado.

ORA HALEY, Plaintiff,
vs.
LEWIS H. BREEZE, Defendant. } Bill of Exceptions.

Be it remembered that on, to wit, the 26th day of July, A. D. 1887, this cause came on for hearing before Hon. Thomas A. Rucker, judge of said district court, at chambers at Aspen, in the county of Pitkin, in the State of Colorado, upon motion of defendant for dissolution of temporary injunction upon answer and bill; and, upon

hearing of said motion, the following motion and documentary evidence was introduced in evidence upon behalf of the defendant in support of his motion to dissolve:

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of Ninth Judicial District in and for the County of Pitkin and State of Colorado.

ORA HALEY, Plaintiff,
vs.
LEWIS H. BREEZE, Defendant. } Motion for Dissolution of Temporary Injunction.

Now comes the defendant, Lewis H. Breeze, and moves the judge of said court and said court to dissolve and set aside the temporary injunction issued in the above-entitled cause, and assigns the following reasons, to wit:

I. For the reason that an injunction will not lie to restrain the collection of a personal tax in the absence of allegations in the bill of complaint that complainant's property was not subject to taxation or that the law under which the same was levied was unconstitutional.

II. For the reason that the allegations of plaintiff's complaint attempting to allege irreparable injury are not adequate for the purpose and do not bring the case within the equity jurisdiction of the court.

24

III. For the reason that the allegations of the complaint are untrue.

IV. For the reason that the complaint filed in said cause upon which said injunction was issued does not state facts sufficient to constitute a cause of action.

V. For the reason that the cause of action attempted to be set out in the complaint upon which said injunction was issued has been fully adjudicated and determined in the supreme court of Colorado, and the assessment of said taxes complained of in this action has been determined by said court and held to have been made in substantial compliance with the statute of Colorado, and therefore the whole matter presented in this case is *res adjudicata*.

Dated July 9, 1887.

JOHN M. BREEZE AND
LEMUEL L. BREEZE,
Attorneys for Defendant.

STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of Ninth Judicial District in and for the County of Pitkin and State of Colorado.

ORA HALEY, Plaintiff, *vs.* LEWIS H. BREEZE, Defendant. } Notice of Motion to Dissolve Temporary Injunction.

To Ora Haley or W. T. Hughes and John A. Coulter, his attorney:

You will please take notice that before the Honorable Thomas A. Rucker, judge of said district court, at chambers, at the court-house, in the town of Aspen, in the county of Pitkin and the State of Colorado, on the 26th day of July, 1887, at the hour of 9 o'clock a. m. of said day or as soon thereafter as counsel can be heard, we will present and argue a motion to dissolve the temporary injunction issued in above-entitled cause on the 1st day of July, A. D. 1887.

That upon the hearing of said motion we will introduce in support of said motion certified copies of assessment schedules of Ora Haley for the years 1883, 1884, and 1885; certified copies of the entries on the treasurer's books of taxes charged against Ora Haley for the year 1884 and certified copy of tax warrant and list issued to defendant, as treasurer of Routt county, Colorado, for collection of taxes for the year 1884 from Ora Haley; certified copies of minutes of meetings of board of county commissioners for the year 1884, showing application of Ora Haley to board of county commissioners of Routt county, Colorado, for reduction of his assessment for 1884 and showing that said application was decided against Haley, and that board would not reduce taxes of Haley for the year 1884; certificate from county clerk and recorder of Routt county, showing that three county commissioners for the county of Routt were duly qualified and acting for the year A. D. 1884, constituting a full board; affidavits, certified copies of letters of Ora Haley to board of commissioners and Thomas H. Iles; letters of Ora Haley, published in the "Pilot" and "Meeker Herald," during the month of February, 1887; letter-press copy of letter of Thomas H. Iles to Haley Oct. 7, 1886; copy of bill of complaint filed by Ora Haley against defendant on which former injunction was issued out of district court of Clear Creek Co., Colo., Dec. 9, 1886; copy of complaint in case of Ora Haley *vs.* defendant, on which injunction was issued out of district court of Jefferson Co., Colo., April 6, 1885, both injunctions restraining collections of same tax; certified copy of opinion of supreme court of Colorado in case Ora Haley *vs.* L. H. Breeze, Co. treas., on the same cause set up in this case; oral testimony of witnesses; sworn answer of defendant.

You can appear at said time and place and resist said motion if you see fit.

Dated July 9, 1887.

JOHN M. BREEZE AND
LEMUEL L. BREEZE,
Attorneys for Defendant.

Received a copy of the above this July 21st, 1887, 12 m.
W. T. HUGHES, *For Haley.*

Endorsed as follows:

26 In district court. 496. Ora Haley *vs.* Lewis H. Breeze. Motion and notice to dissolve injunction. Filed July 26, 1887. John M. Beach, clerk. John M. Breeze and Lemuel L. Breeze, att'ys for defendant, Yampa, Colo.

STATE OF COLORADO, } *ss:*
County of Routt, }

This is to certify that the tax schedules hereto attached are true, full, and complete copies of the original schedules of assessments of Ora Haley's property in Routt county, Colorado, for the years A. D. 1883, 1884, and 1885, and now on file in the office of the clerk and recorder of Routt county, Colorado.

In witness whereof I have hereunto set my hand and the seal of said county of Routt, at Hahn's Peak, Colorado, July 11th, A. D. 1887.

[SEAL.] I. G. VOICE,
County Clerk and Recorder of Routt County, Colorado.

(Here follow exhibits marked pp. 27, 28, 29.)

30 STATE OF COLORADO, } *ss:*
County of Routt, }

This is to certify that it appears from the official bonds of county commissioners of Routt county, Colorado, now on file in the office of the county clerk and recorder of Routt county, Colorado, that during the year A. D. 1884 W. R. Walker, David Miller, and A. H. Bassett were the duly elected, qualified, and acting commissioners of Routt county, Colorado, and that there is no record or evidence appearing in said office of any one of said commissioners having ceased to be a commissioner until the election and qualification of William Baier, Thomas H. Iles, and Samuel H. Tharp, the present board of commissioners; that it appears in my office from the election records and canvass of votes of the general election in 1884 that Solomon Rolf was elected as county commissioner to succeed said A. H. Bassett, and that there is no evidence or record on file here showing qualification of said Rolf as commissioner, nor any evidence of his having served or acted, leaving A. H. Bassett the lawful commissioner during the year A. D. 1885, under the statute providing that any county officer shall hold over until his successor is duly elected and qualified.

In testimony whereof I have hereunto set my hand and the seal of said county of Routt, at Hahn's Peak, Colorado, this 11th day of July, A. D. 1887.

[SEAL.] I. G. VOICE,
County Clerk and Recorder of Routt County, Colorado.

Endorsed as follows:

Certificate of Co. cl'k showing full board of Co. commissioners in 1884. Exhibit G.

STATE OF COLORADO, } ss:
County of Routt, }

W. R. Walker, being duly sworn according to law, deposes and says that he was a member of the board of county commissioners of Routt Co., Colo., during the year 1884; that affiant was present at the meeting of the board of commissioners of Routt
31 county, Colo., during the year 1884; that affiant was present at the meeting of the board of commissioners of said county at Hahn's Peak on the first Monday of July, A. D. 1884; that affiant has heard read the allegations and charges made by Ora Haley in his bill of complaint, in which an injunction issued against L. H. Breeze, county treasurer of said county, dated Dec. 9, 1886; that the assessment of 1884, complained of by said Ora Haley, was made by James L. Tower in the presence of the board of commissioners at their meeting, commencing on the first Monday of July, 1884. Said Haley having neglected and refused to list his own property, it became and was the duty of said assessor to list his property before returning his assessment-roll; that affiant knows of his own knowledge that said Tower made said assessment of Ora Haley in the presence of board of commissioners with their advice and suggestions, and from all that was said and done by said assessor in relation to said assessment of 1884 affiant knows that the charges made by said Haley against said assessor of fraud are untrue, for affiant believes that said assessor made said assessment honestly and without any intention of injuring or annoying said Haley, as alleged in his said bill of complaint.

Affiant further states that all the charges and allegations in said bill of complaint that affiant knew at the time of the meeting of the board of equalization on the third Monday of July, 1884, that large amounts in number and value of property had been omitted from the assessment of 1884 by said Tower, assessor, fraudulently and for the purpose of increasing said Haley's taxes is false and untrue; that affiant, after inquiry, has been unable to learn of any property which was omitted from assessment of 1884, either intentionally or otherwise; that the allegations in said bill that affiant refused as a member of board of county commissioners to reduce said Haley's taxes with the intent to injure and oppress said Haley are false and untrue; that the allegation in said bill of complaint that the board of county commissioners failed and refused to act
32 upon said Haley's application for reduction of his said taxes of 1884 is untrue; that said Haley sent a letter to the board of commissioners, dated Oct. 3, 1884, asking to have his taxes for 1884 reduced, and that on the 6th day of October, 1884, affiant and David Miller, being present as the only two members of said board present, examined said application, and, on motion, decided not to reduce said assessment, and the said decision was entered upon the records of said proceedings of said board; and the allegations that

said board refused to act upon said application and that no decision was made by said board are all false and untrue; that from the knowledge affiant has of Haley's cattle and horses in Routt county and from all that affiant can ascertain he believes that for the year 1884 said Haley was very much under-assessed instead of being over-assessed, as he alleges; that the board of county commissioners held their meeting for correction of assessment-roll at office of county clerk at Hahn's Peak, Colo., on the first Monday of July, and for equalization of assessments at same place on third Monday in July, 1884, and that the notices for holding said equalization meetings were posted according to law; that affiant knows that one of the notices of that meeting was posted by the county clerk at Hahn's Peak, Colo., and that affiant posted one at Hayden, Colo., and sent another by the mail-carrier, with instructions to post at Lay creek, at Haley's ranch, and affiant is informed by said mail-carrier that he did post said notice at Haley's ranch, in said Routt county, Colorado, there being no paper published in said county of Routt at that time; that affiant was a member of the board of commissioners of Routt county, Colo., during the years 1883, 1884, and 1885, and attended all meetings held by said board during all these years, and that Ora Haley neither personally nor by attorney or agent came before said board asking for any reduction of his said taxes and never furnished any proof sufficient to establish the
33 fact of any over-assessment, but has always ignored the board of commissioners of said county and refused to make proof of his claims for reduction as all other tax-payers are required to produce; that affiant believes that said Haley, because he is wealthy and a non-resident of Colorado, is not entitled to any greater favors or considerations than citizens of said Routt county, and affiant knows of his own knowledge that said Haley has been treated fairly in every respect and has had the same consideration as all other citizens have had who had claims for reductions; that affiant believes that all of assessments made by said Tower were made fairly and without any intent to injure or oppress said Haley or any other citizens; that said Haley is the only man who has ever made any charges before the board of commissioners or in any court against said James L. Tower, assessor, of fraudulently assessing any one; that affiant knows of no reason why the board of county commissioners should cut said Haley's taxes down for the year 1848 without any proof that he has been over-assessed; and further deponent saith not.

(Signed) W. R. WALKER.

Subscribed and sworn to before me this 28th day of January, A. D. 1887.

[NOTARIAL SEAL.] E. SHELTON,
Notary Public.

Endorsed: Affidavit of W. R. Walker, Exhibit "D."

STATE OF COLORADO, }
Clear Creek County, } *ss:*

In the District Court of the First Judicial District of the State of Colorado within and for the County of Clear Creek.

ORA HALEY, Plaintiff, }
vs. } Summons.
L. H. BREEZE, Defendant. }

The people of the State of Colorado send greeting to the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of
34 the district court of the first judicial district of the State of Colorado in and for the county of Clear Creek on the second Monday after service hereof, if served within this county; or if served out of this county, but within this judicial district, then on the third Monday thereafter; or if served out of this judicial district, but within the State of Colorado, then on the fifth Monday thereafter. If you fail to answer the complaint within that time judgment will be taken against you according to the prayer of the complaint.

And you are hereby notified to serve a copy of your answer on the undersigned, at his office, in Georgetown, in the State of Colorado, on or before the second day of ——, A. D. 1886.

This action is brought to recover the value of thirty thousand dollars, due from the defendant to the plaintiff for conversion of cattle, for damage, and injury done to cattle of plaintiff by defendant in the county of Routt and State of Colorado in the years 1885 and 1886; also that said conversion, wrongs, and injuries were maliciously committed.

And you are further notified that if you fail to appear and answer the said complaint as above required the said plaintiff will take judgment against you for said sum of thirty thousand dollars, and that said conversion, wrongs, and injuries were maliciously committed, and with costs of this action.

JNO. A. COULTER,
Plaintiff's Attorney; Office Address, Georgetown, Colo.

Endorsed as follows: Summons. District court. Ora Haley, plaintiff, *vs.* L. H. Breeze, defendant. Filed this — day of ——, A. D. 188–. —— ——, cl'k. —— ——, deputy cl'k.

35 STATE OF COLORADO, }
County of Clear Creek. }

In District Court of said County and State.

ORA HALEY, Plaintiff, }
vs.
L. H. BREEZE, as County Treasurer of the County of Routt, in State of Colorado, Defendants. }

The plaintiff complains and alleges—

I.

That one L. H. Breeze is now and was the treasurer of Routt Co., Colorado, during the years of 1884 and 1885, and that said county of Routt is a duly organized county; that one J. L. Tower was the assessor for said county of Routt for the year 1884, duly elected and qualified and acting as such assessor for that year. Plaintiff further states that in the year A. D. 1884 he was the owner of and had in said Routt county 6,300 head of cattle and no more, and that said cattle were feed and grazed on the lands of Routt county, Colorado. Plaintiff further states that he had in his employ and in charge of said cattle a foreman or agent, and that he was discharged as such foreman some time during the month of May, 1884; that plaintiff appointed one Littlefield as his foreman and agent to take charge of and keep said cattle from being lost and to provide for their safety, and that said Littlefield was in charge of his said cattle during the spring and year of 1884, and that said Littlefield, having just taken charge of said cattle, did not know and had not at that time any means of knowing in said Routt Co., other then by rounding up and counting them, how many cattle the plaintiff had.

Plaintiff further alleges that some time in the early part of the year and perhaps in the month of May, 1884, the said assessor of said Routt county called on plaintiff's foreman and requested him to list the plaintiff's property and the cattle that plaintiff
36 had in said county; that said foreman declined to do so then and at that time, informing said assessor then and there that the reason that he could not list said plaintiff's property — that he did not know and had no means of knowing how many cattle plaintiff had in said county, but he informed said assessor that he, said foreman, would immediately write to plaintiff and obtain the necessary information to enable him to list said cattle, and that he would list them; and plaintiff says that notwithstanding the promise and assurance of said plaintiff's foreman the said assessor, without giving said plaintiff's foreman any time to obtain said information from plaintiff, proceeded at once and made out for plaintiff a list of plaintiff's property and of his said cattle and horses and real estate, and that said assessor had no knowledge or information in regard to said property, and that he, the said assessor, attempted to and did arbitrarily list for the plaintiff 960 acres of land and valued the same at $2,880, when in truth and in fact plaintiff only owned 640 acres of land in said county and the value of said land was only

worth $1,920 instead of $2,880; that said assessor, without a view of the same and without knowing the No. thereof, arbitrarily and for the purpose of oppressing the plaintiff and of a reckless disregard of the plaintiff's rights in the premises and exceeding his duties as such assessor, knowingly, wilfully, with the intention and for the purpose of assessing plaintiff with a larger number of horses than he had in said county, and with the intent and purpose of causing plaintiff to be taxed and of making him pay a very much larger amount of taxes than his just and equal portion of the taxes of said county, listed for the plaintiff and charged him on said list with 165 head of horses and valued them at $6,845, when in truth and in fact the plaintiff had in said county of Routt only 141 horses instead of 165 horses, as said assessor had listed them, and the same should have been valued at $4,935 instead of $6,845, as the same was valued by said assessor on his said list; that said assessor, without viewing plaintiff's cattle and without
37 knowing or having any knowledge of the same and without making any inquiries in the premises of any party or person who knew the number thereof and without making any investigation to ascertain the number or value thereof, arbitrarily and of his mere will, with a reckless disregard of his duty, knowingly, wilfully, and with the intention and for the purpose of oppressing and of assessing plaintiff with a larger number of cattle than he had in said county, and with the intent and purpose of causing the plaintiff to be taxed and of making him pay a very much larger amount of taxes than his just and equal portion of the taxes of said county, fraudulently listed for and charges the plaintiff on said tax-list with 8,200 head of cattle and valued the same at $163,000, when in truth and in fact the plaintiff had in said Routt county only 6,300 head of cattle and no more and of the cash value of $120,000 instead of $163,000, as the same was valued on said assessor's list. Plaintiff says and alleges the fact to be that said assessor, knowing at the time that he did not know how many cattle plaintiff had in said county, recklessly and wilfully and in utter disregard of his duty and of the law and justice and in disregard of plaintiff's rights, knowingly, wilfully, and with the intention and for the purpose of assessing plaintiff with more property than he had in said county, and with the intent and purpose of causing plaintiff to be taxed and of making him pay a very much larger amount of taxes than his just and equal and ratable portion of the taxes of said county, listed for said plaintiff and charged him on said tax-list with 1,900 head of cattle more than said plaintiff had and owned in said county; that said listing and assessment was grossly excessive both as to the number of cattle and to the value thereof, and that said assessor must have known and could have known by proper inquiry that said listing and assessment was grossly excessive and unjust; that said assessment, being for 1,900 head of cattle
38 more than plaintiff had and owned in said Routt county during the year 1884 and for 320 acres of land more than plaintiff owned in said county, making his assessment on said cattle about $38,000, on said horses $1,910, and on said land $960, ag-

gregating about $40,000 more of valuation on the property than he actually owned and had in said county during said year, and made him liable for about one thousand dollars more than his ratable portion of the taxes of said county according to the levy afterward made.

Plaintiff further alleges that the said assessor above mentioned during the said year A. D. 1884 wilfully, purposely, and knowingly failed and refused to list and return upon the tax-list and failed to assess large amounts in number and value of personal and real property which was in said county of Routt subject to be taxed therein during said year A. D. 1884, when it was the duty of said assessor under the law to assess and list the same, and that said assessor purposely omitted to assess and list said property in said county for the purpose and with the intention of making the plaintiff bear and pay more than his ratable and just proportion of the taxes of said county, and that the failure of said assessor so to value, list, and assess the property so by him purposely omitted did increase the amount of taxes which were assessed against the plaintiff over and above the amount which the plaintiff would have been legally and justly compelled to pay if said property had all been listed, valued, and assessed as the law requires; and plaintiff further alleges that one of the members of the board of commissioners of said county, and also the defendant, did well know of the wilful, malicious, and fraudulent acts of the said assessor above mentioned and of his failure to value and list other property in the said county of Routt which was subject to taxation for that year as aforesaid, and did know that large amounts of said property in numbers and value subject to taxation for the year 1884 *was* not listed or assessed.

39 Plaintiff further alleges that as soon as he learned of said excessive, unlawful, and fraudulent assessment, listing, and valuation of his said property for said year A. D. 1884 as aforesaid he made out a written and sworn statement of his property, both real and personal, in said Routt county and placed said statement before the board of county commissioners and board of equalization, and being only two in number of the commissioners of said Routt county, and requested said board of county commissioners, either as a board of equalization or as having charge of the affairs of the county, to correct said listing and assessment so as to list him, the said plaintiff, for the real and true number of cattle, horses, and land which he had in the said county in the year 1884 and for the real and true amount in numbers and acres of land and the value thereof, to wit, 6,300 head of cattle, 141 head of horses, and 640 acres of land, the same being the true amount of plaintiff's property in said county and for which he was rightfully taxable and for which he has been always ready, willing, and prepared to pay the tax on the same whenever he could ascertain the amount of taxes and the value. Plaintiff further alleges that the reason why he had not made out a list of his property prior thereto was because he was a non-resident of the State of Colorado and was absent from the State of Colorado at the time when he was by law required to list the

said property, and the said plaintiff never was served, either by himself or agent, with any notice by the said assessor to list his said property as the law requires, and that no blanks for said purpose were ever left with said plaintiff or his agent or foreman.

Plaintiff further alleges, on information and belief, that said assessor never took and subscribed the oath attached to the assessment book of Routt county for the year 1884, as required by law, and further states that said treasurer is insolvent and is unable to respond in damages for any trespass he may commit under cover
40 of official acts as treasurer of said county, and that the county clerk of said Routt county did not give any notice, by publication or otherwise, of the time and place of meeting of the board of equalization for the year 1884, and that the board of county commissioners of said Routt county did not hold their said meetings as a board of equalization during said year, as provided by law, at the office of the county clerk of said county.

And plaintiff further alleges that said board did not take any action upon application of the plaintiff for the correction of said listing and assessment, inasmuch as there was only two commissioners qualified and acting as such in the county of Routt, and they were divided and continued to be divided as to what ought to be done in the premises, and that the said application of the said plaintiff was never acted upon by the board of equalization of said Routt county, nor has any board of equalization of said county since that time to the present acted upon said application, as plaintiff is informed and believes.

Plaintiff further alleges that he attended and was present at the office of the defendant between the 1st day of November and the 30th day of December, 1884, ready, willing, and able to pay his said taxes, and was always since that time to the present been ready, willing, and competent to pay any just, reasonable, and ratable tax on his said property, and that he has repeatedly applied to the board of county commissioners of Routt county for an adjustment of his said tax for said year, and that he has been at the county-seat of said Routt county, to wit, at Hahn's Peak, to meet said board at their regular session and meeting, and that said board of county commissioners, as assured, knowing the financial responsibility of the plaintiff and his willingness so to do, would adjust and inform plaintiff of his rights in the premises, but, disregarding their said several promise-, have failed to so inform plaintiff.

Plaintiff further alleges that no legal assessment or listing has ever been made and the said board of equalization has never
41 made any decision upon the application of said plaintiff from which he could take any appeal or writ of error from. Plaintiff further alleges that one of the board of county commissioners as aforesaid and member of board of equalization knew at the time of holding the meeting of said board that there were large amounts in number and value of property subject to taxation for the year A. D. 1884 which had not been listed and assessed, as has been heretofore stated, and knew that the same had been purposely left out of said listing and assessment for the purpose of increasing the taxes

of said plaintiff to an amount above his just ratable proportion thereof, and that said commissioner last above referred to is W. R. Walker, and that the said Walker is the same commissioner and the same member of the board of equalization who refused to correct the fraudulent and unjust listing and assessment of plaintiff's property as aforesaid, and that said Walker so refused to make said correction for the *pra*pose and with the intention of making said plaintiff pay more than his just and legal portion of the taxes of said county for said year, and that said Walker failed and that said board of equalization failed to equalize and adjust the assessment and valuation of property in said county during said year, so that all of the taxable property in said county should be listed and taxed and so that the plaintiff be listed and taxed for more than his just and legal portion of said tax and so that plaintiff should not be compelled to pay taxes upon more property than he actually owned or had in said county of Routt during the year 1884, and that said Walker made all of said failure and omission knowingly and wilfully and with the intention of injuring and annoying said plaintiff and of making him pay more than his just and equitable and legal portion of taxes in and for said county for said year; and plaintiff further alleges that, having made his application to the board of county commissioners and equalization for correction of said unequal, illegal, and fraudulent and void assessment,
42 and the said board of county commissioners having failed to act upon said application, and there being no other remedy provided by law for the correction of such unequal, illegal, and unjust assessment, he, the plaintiff, is left without any remedy at law for the wrong and injustice imposed upon — by such assessment and the levy of taxes on him founded on said assessment. Plaintiff further alleges that by reason of said illegal, unequal, unjust, and fraudulent assessment and by reason of the levy made on said assessment he is charged on the tax books of said county with the sum of $4,248.59, when, if the plaintiff has been assessed with and for the true and real number, amount, and value of his said property in said county of Routt for said year 1884 and subject to the tax during said year as aforesaid, and if all of the taxable property in said county during said year had been listed and assessed and none thereof knowingly and wilfully having been omitted from such listing and assessment by the said assessor and the said board of equalization aforesaid, that the said plaintiff's taxes for said year 1884 would have been much less tha*m* the amount above stated, but how much less plaintiff is unable to state. Plaintiff further alleges that the said defendant is now making distraint and sale of his said cattle and property to make and collect said sum of $4,248.59, taxes as aforesaid, and which said taxes plaintiff alleges are wholly illegal, unjust, and void.

And plaintiff further alleges that the past month of November has been on the ranges in said Routt county visited with severe storms, wind and snow, and that the rounding up of plaintiff's said cattle at the present time would cause irreparable injury and cause the death of many of said cattle; and plaintiff further alleges that

there is no market or markets for cattle in said county of Routt, and that at this season there are no buyers of cattle in said county, and that if distraint and sale of said cattle should now be made the said cattle would be sold at great and serious sacrifice in order
43 to make said sum of money aforesaid, and great and irreparable injury and loss would thereby be inflicted upon the plaintiff; and plaintiff further alleges that ever since the said supposed tax and assessment of 1884 the said defendant was there and since and now is the treasurer of said Routt county, and that during all the time from that date of said supposed tax and assessment and levy in 1884 all of said cattle and horses and all of said lands upon which the said supposed assessment was made have remained the property of plaintiff and now *is* his property, and remained with- the said county of Routt and within the jurisdiction, power, and official control of the defendant, and all of said cattle and horses and lands have greatly increased in value and were continually subject to distraint and sale for any and all taxes due thereon at any time the same as at the present time and without special loss to plaintiff, which such distraint made at the present time entails and heretofore alleges.

Plaintiff further alleges that at a special meeting of the board of county commissioners of said county of Routt held Sept. 6th, 1886, and at the regular seession held by said board Oct., 1886, he was present before said board at said sessions, and that the said defendant being also present at said sessions and at each of said sessions it was distinctly understood that assessment would and should be adjusted, plaintiff at each of said sessions and at all times offering to pay said tax whenever the same should be adjusted in accordance with right. Plaintiff further alleges that during the years of 1884, 1885, and 1886 the defendant has been and still is the treasurer of said Routt county; that all of plaintiff's said property, both real and personal, during all of said times has been and still is in *in* said county and within reach and jurisdiction of defendant; that defendant during all of said times
44 hitherto has made no effort to collect or distrain said tax- either by distraint or otherwise, except in the month of March, 1885, during a very inclement and unseasonable season and weather, at which time defendant was temporarily restrained from rounding up and selling plaintiff's said cattle and horses by order of this honorable court, which suit has been heretofore dismissed; that at this time and for more than five weeks last past the weather has in said county been and still is very inclement and severe upon all kinds of live stock; that defendant's seizure and corralling the plaintiff's property, as heretofore alleged, will cause the plaintiff great and irreparable damage and injury, as here*in*tofore alleged; that during the latter part of the spring seasons, all of the summer seasons, and the early part of the fall seasons of the year, commonly called by stockmen the mild and marketable seasons, said plaintiff's said horses are much closer to the county-seat of said county and defendant's official place of business, and that said stock could at such seasons of the year be rounded up at much less expense than

during the inclement seasons and with far less danger of loss than during the inclement seasons; that during said mild seasons of the year cattle and horses are in comparatively good condition for selling, and such seasons and during said seasons in said county is there any demand for said stock; that there is no demand or scarcely any demand for such stock in said county at said inclement season. There is no demand whatever for such stock now in said county, of all of which said defendant is well aware and fully informed; but plaintiff alleges that notwithstanding defendant's said knowledge as aforesaid, but *construing* fraudulently, wilfully, and maliciously how to annoy, oppress, and injure this plaintiff and to work him great and irreparable loss, annoyance, and injury, the defendant, as heretofore alleged, has seized upon and corral-ed a great number of plaintiff's cattle and
45 threatens to sell and will sell the same unless restrainep by the order of this honorable court; and plaintiff further says that in order for the defendant to take possession of it it would be necessary for him to handle and gather the plaintiff's cattle or a sufficient number thereof to pay the amount of said supposed tax, and that to round up, gather, and handle said cattle at this season of the year, when there is no hay to be had upon which they can subsist or be subsisted upon as said defendant is driving them from their winter range, would cause great damage to said cattle; would depreciate to a very great degree the value of the same; that the driving and handling would cause the death and loss of a large number, and that to gather and take possession of sufficient numbers of said cattle at the present season, with the snow being deep, would cause great and irreparable damage to the plaintiff and to his said herd of cattle, and it would be in excess, too, of the whole amount of said tax to the extent of the whole herd of cattle being lost and destroyed.

And plaintiff further says that none of the several facts, violations of duty, frauds, wrongs herein set forth and complained of appears of record in any of the records of Routt or elsewhere whereby and whereon plaintiff might found an action at law; but the same rests in proof and are wholly and properly cognizable in a court of equity; and plaintiffs says that there is no remedy at law whereby the said wrongs and grievances herein complained of can be released, and that his only remedy is by and through the writ of injunction of this honorable court restraining L. H. Breeze, treasurer of said county of Routt, from collecting or attempting to collect the said tax by distraint and sale or any part thereof.

And plaintiff further says that the residence of said defendant as treasurer of said Routt county is at or near the town of Yampa; that said town — Yampa is situated over and across the Rocky mountains and on the west side thereof; that there is no direct and practi-
46 cable road at this season of the year to the said town of Yampa; that it would be almost impossible to get to Hahn's Peak, the county-seat of said county; that the only route to the said town of Yampa now at all practicable is by way of Rallins, in the Territory of Wyoming; that it would require a long time and would cause

great delay to give notice to the defendant of this application for an injunction; and plaintiff says that he believes and fears that if the time is taken necessary to give said notice that the said defendant will in the meantime have committed the many wrongs and grievances hereof complained of and gather and sell said cattle and cause great and irreparable injury and damage, which the said plaintiff seeks by the said writ to avert, and that this case is and the necessities thereof are too urgent to admit of delay, which would be incident of giving to such notice. Wherefore the said plaintiff prays that the said L. J. Breeze, as the said county treasurer of the said Routt county of the State of Colorado, defendant, and his successor in office and his and their deputies and agents, servants, and workmen may be restrained by an injunction issued out of the court and under the seal thereof from making distress and sale of the said cattle and horses and other property of the said plaintiff in said county of Routt or elsewhere in said State of Colorado, and if the said defendant has already made distress thereon, then that the said defendant be restrained from proceeding any further therein and from making sale or other disposition of said personal property or any part thereof, and to this end, for this purpose, plaintiff prays that a temporary injunction issue out of court and under seal of the court directed to said defendant, L. H. Breeze, as county treasurer of said county of Routt, and to his successors in office, commanding him or them and their deputies and agents and each and every one of them absolutely to desist and refrain from making distress and sale of said cattle and horses or other personal property of the said plaintiff in
the said county of Routt or elsewhere in the State of Colorado
47 until the farther order of the court in regard thereto, and, if
said cattle and horses and other *and* personal property of the plaintiff has been taken by said defendant as county treasurer of said county or by his deputy or deputies, agent or agents, therein commanding him and them and each and every one of them and his successors in office absolutely to desist and refrain from proceeding any farther therein and from selling or otherwise disposing thereof until the further order of this court in regard thereto, and to release, set free, and turn over said cattle, horses, and other personal property, if so taken possession, to said plaintiff, his foreman, agent or agents, and to absolutely desist from collecting or attempting to collect the said tax as aforesaid; and plaintiff prays that on the final hearing of this cause the said injunction be made perpetual, and for such other and further relief as equity and good conscience may require and as to the court may seem just and proper.

JNO. A. COULTER,
Attorney for Plaintiff.

THOS. CANTLOM, *Of Counsel.*

STATE OF COLORADO, }
County of Arapahoe. }

ORA HALEY, Plaintiff,
vs.
L. H. BREEZE, as County Treasurer of the County of Routt, in the State of Colorada.

Ora Haley, being duly sworn according to the law, on oath states that he is the plaintiff in the above cause; that he had heard read the same and knows the contents thereof, and that the same is true according to the best information and belief.

Affiant further states that irreparable mischief and injury will result to plaintiff if notice be given, and that the case is too urgent to admit of the delay incident to give notice, and that the defendant may commit the acts complained of which injunction relief is sought.

(Sig.) ORA HALEY.

48 [NOTARIAL SEAL.] Subscribed and sworn to before me this first day of Dec., 1886.

BEN. CHASE,
Notary Public.

In the District Court of said County.

STATE OF COLORADO, }
Jefferson County. }

ORA HALEY, Plaintiff,
vs.
L. H. BREEZE, as County Treasurer of the County of Routt, in the State of Colorado, Defendant. } Complaint.

And now comes the said Ora Haley, plaintiff, and complains of the said defendant, L. H. Breeze, as the treasurer of the county of Routt, in the State of Colorado, and says that the county of Routt is a duly organized county in the State of Colorado and is attached to the county of Grande for judicial purposes; that the defendant, L. H. Breeze, is the county treasurer of the county of Routt, duly elected and qualified, and is now acting as such county treasurer.

That one Power was the assessor for said county of Routt for the year A. D. 1884, duly elected and qualified and acting as such assessor for that year.

Plaintiff further says that in the year A. D. 1884, he was the owner of and had in said Routt county 6,300 head of cattle and no more, and that said cattle were scattered all over and were grazed on the grass land of said county.

Plaintiff further says that he discharged the foreman or agent whom he had in charge and control of said cattle in said Routt county at and before that time and appointed one Littlefield as his foreman and agent to take charge of and keep said cattle from being lost and to provide for their safety; and plaintiff further says that

said Littlefield was in charge of his said cattle in the spring
49 and during the year A. D. 1884; that said Littlefield, his said foreman, not having been in charge but a very short time of said cattle, did not know and had no means of knowing, in said Routt county, other than by rounding up and counting them, how many cattle plaintiff had in said Routt county, and that no other person in said Routt county knew how many cattle the plaintiff had therein. Plaintiff further says that some time in the early part of the year A. D. 1884, perhaps in the month of May, the said assessor of said Routt county called on said plaintiff's foreman and requested him to list the plaintiff's property and the cattle the plaintiff had in said county; that said foreman declined to do so then and at that time, informing said assessor then and there that the reason that he would not list said plaintiff's property was that he did not know and had no means of knowing how many cattle plaintiff had in said county, but he informed said assessor that he, said foreman, would immediately write to the plaintiff and obtain the necessary information to enable him to list said cattle, and that he would then list them; and plaintiff says that notwithstanding the promise and assurance of said plaintiff's foreman the said assessor, without giving said plaintiff's foreman any time to obtain said information from plaintiff, proceeded at once and made out for plaintiff a list of plaintiff's property and of his said cattle and horses, and without any knowledge or information on the subject arbitrarily listed for the plaintiff 960 acres of land and valued the same at $2,880, when in truth and in fact the plaintiff owned only 640 acres of land in said county and it should have been valued at $1,920 instead of $2,880; that said assessor, without a view of the same and without knowing the number, arbitrarily and of his mere will, with a reckless disregard of the defendant's rights and of his duty as such assessor, knowingly, wilfully, and with the intention and for the purpose of assessing plaintiff with a larger number of horses than he had in said county, and with the intent and purpose of causing plaintiff to be taxed and of making him pay a very much larger amount of taxes than his just and equal portion
50 of the taxes of said county, listed for the plaintiff and charged him on his said list with 165 head of horses and valued them at $6,845, when in truth and in fact the plaintiff had in said county of Routt only 141 horses instead of 165 horses, as said assessor had listed them, and the same should have been valued at $4,935 instead of $6,845, as the same were valued on said assessor's list; that said assessor, without viewing plaintiff's cattle, without any knowledge of, and without any means of knowing the number thereof, and without making any inquiries of persons who knew the number thereof, and without making any investigation to ascertain the number and value thereof, arbitrarily and of his mere will, with a reckless disregard of his duty, knowingly, wulfully, and with the intentions and for the purpose of assessing plaintiff with a larger number of cattle than he had in said county, and with the intent and purpose of causing the plaintiff to be taxed and of making him pay a very much larger amount of taxes than his just and equal portion of the taxes of said

county, fraudulently listed for and charged the plaintiff on said tax-list with 8,200 head of cattle and valued the same at $163,000, when in truth and in fact the plaintiff had in said Routt county only 6,300 head of cattle and no more, and of the cash value of $126,000 instead of $163,000, as the same are and were valued on said asssessor's list.

Plaintiff says that said assessor, knowing at the time that he did not know how many cattle plaintiff had in said county, recklessly and wilfully and in utter disregard of his duty and of the law and justice and in disregard of the rights of the plaintiff, knowingly, wilfully, and with the intention and for the purpose of assessing plaintiff with more property than he had in said county, and with the intent and purpose of causing plaintiff to be taxed and of making him pay a very much larger amount of taxes of said county than his just and equal and ratable portion of the taxes of said county, listed for said plaintiff and charged him on said tax-list
51 with 1,900 head of cattle more than said plaintiff had and owned in said county; that said listing and assessment was grossly excessive, both as to the number of cattle and as to the value thereof, and that said assessor must have known and could have known by proper inquiry that said listing and assessment was grossly excessive and unjust; that said assessment being for 1,900 head of cattle more than plaintiff had and owned in said Routt county during the year A. D. 1884, for 24 head of horses more than plaintiff had in said county during said year, and for 320 acres more land than plaintiff owned in said county, making his assessment on said cattle about $38,000, on said horses, $1,910, and on said land, $960, aggregating about $40,000 more of valuation on the property he actually owned and had in said county than his ratable portion of the taxable property in said county, and made him liable for about $872 more than his ratable portion of the taxes of said county according to the levy afterwards made thereon.

And plaintiff further says that the said assessor above mentioned, during the said year A. D. 1884, wilfully, purposely, and knowingly failed to list and to return upon his tax-list and failed to assess large amounts in number and value of personal property which was in the said county of Routt subject to be taxed therein during said year A. D. 1884, when it was the duty of the said assessor under the law to assess and list the same, and that said assessor purposely omitted to assess and list said property in said county for the purpose and with the intention of making the said plaintiff bear and pay more than his ratable and just proportion of the taxes of said county.

And that the failure of said assessor so to value, list, and assess the property so by him purposely omitted did increase the amount of taxes which were assessed against the plaintiff over and above the amount which the plaintiff would have been legally and justly compelled to pay if said property had been all listed, valued, and assessed as the law requires; and plaintiff further says that
52 one of the members of the board of commissioners of said county and also the said defendant did well know of the wilful, malicious, and fraudulent acts of the said assessor above

mentioned, and of his failure to value and list other property in the said county of Routt which was subject to taxation for that year as aforesaid, and did know that large amounts of said property in number and value subject to taxation for that year was not listed or assessed; and plaintiff further says that as sson as he learned of said excessive and unlawful and fraudulent assessment, listing, and valuation of his said property for said year A. D. 1884 aforesaid he made out a written statement of his property, both real and personal, and in said Routt county, and placed said statement before the board of equalization of said Routt county, and requested said board of equalization to correct said listing and assessment so as to list him, the said plaintiff, for the real and true number of cattle and horses which he had in said county in the year A. D. 1884, and for the real and true number of acres of land he had therein, viz., for 6,300 head of cattle, 141 head of horses, and for 640 acres of land, the same being the true amount of plaintiff's property in said county and for which he was rightly taxable; and plaintiff further states that the reason why he had not made out a list of his property prior thereto was because he was a non-resident of the State of Colorado, and was absent from said State at the time when he was by law required to list his said property, and the said plaintiff never was served with any notice by the said assessor to list his said property as the law requires, and no blank form for such purpose was ever left with said plaintiff; and plaintiff further states that said board of equalization did not decide upon said application of plaintiff for the said correction of the said listing and assessment, inasmuch as there were only two commissioners qualified and acting as such in the county of Routt, and they were divided and continued to be divided as to what ought to be done in the premises, and the said application
53 of the said plaintiff in that behalf was left undisposed of and undecided and no decision was made thereon, nor has any been made thereon since that time, from which said plaintiff could take an appeal or writ of error; and plaintiff says that one of said board of -qualization knew at the time of holding the meeting thereof that there were large amounts in number and value of property subject to taxation for the year A. D. 1884 which had not been listed and assessed, as has been hereinbefore stated, and knew that the same had been purposely left out of said listing and assessment for the purpose of increasing the taxes of said plaintiff to an amount above his just and ratable portion thereof, and that the said commissioner's name last above referred to is W. R. Walker, and that the said Walker is the same commissioner and the same member of the board of equalization who refused at the meeting of the said board of equalization to correct the fraudulent and unjust listing and assessment of plaintiff's property as aforesaid; and that said Walker so refused to make such correction for the purpose and with the intention of making said plaintiff pay more than his just and legal portion of the taxes of said county for said year, and that said Walker failed, and that said board of equalization faile- to equalize and adjust the assessment and valuation of property in

said county during said year, so that all of the taxable property in said county should be listed and taxed, and so that the plaintiff should not be listed and taxed for more than his just and legal portion of said tax, and so that the said plaintiff should not be compelled to pay taxes upon more property than he actually had or owned in the said county of Routt during the said year A. D. 1884, and that said Walker made all of said failures and omissions knowingly and wilfully and with the intention of injuring said plaintiff and of making him pay more than his just and equitable and legal portion of the taxes for said county for said year; and plaintiff further says that having made his application
54 to the said board of equalization for the correction of said unequal, illegal, fraudulent, and void assessment, and the said board of equalization having failed to act upon said application, and there being no other remedy provided by the law for the correction of such unequal, illegal, and unjust assessment, he, the plaintiff, is left without any remedy at law for the wrong and injustice imposed upon him by such assessment and the levy of taxes on him founded on said assessment; and plaintiff further says that by reason of said illegal, unequal, unjust, and fraudulent assessment and by reason of the levy made on said assessment he is charged on the tax books of said county with the sum of $4,248 59, when if the plaintiff had been assessed with and for the true and real number, amount, and value of his said property in said county of Routt and subject to the tax during said year as aforesaid, and if all of the taxable property in said county during said year had been listed and assessed and none thereof knowingly and wilfully having been omitted from such listing and assessment by the said assessor and the said board of equalization aforesaid, that the said plaintiff's taxes for said year A. D. 1884 would have been less than the amount above stated, but how much less plaintiff is unable to state. Plaintiff further says that said defendant threatens to and is about to make distraint and sale of his, this plaintiff's, said cattle and property to make and collect said sum of $4,248.59, taxes as aforesaid, and which said taxes plaintiff alleges are wholly illegal, unjust, and void.

And plaintiff further says that there is no market or markets for cattle in said Routt county, and that at this time of year there are no buyers of cattle in said county, and that if distraint and sale of said cattle should now be made, the said cattle would be sold at a great and ruinous sacrifice in order to make said sum of money aforesaid and great and irreparable injury and loss would thereby be inflicted on the plaintiff; and plaintiff further says that in order for the said treasurer, the defendant, to take possession of said cattle it
55 will be necessary for him to, and he threatens and is about to, round up, handle, and gather the plaintiff's cattle or a sufficient number thereof to pay the amount of said tax, and that to round up, gather, and handle said cattle at this season of the year, when there is no new grass upon which they could subsist, and when they are in a weak condition, occasioned by passing through a long winter, would cause great damage to said cattle—would depreciate to a very great degree the value of the same; that

the driving and handling would undoubtedly cause the death and loss of a large number thereof, and that to gather and take possession of a sufficient number of cattle at this season of the year to pay said tax would cause damage to the plaintiff and to his said herd of cattle to an amount greatly in excess of the whole amount of said tax, and in fact it would nearly use up plaintiff's whole herd, and that the defendant threatens and is about to so proceed to take the possession of said cattle at once; and plaintiff further says that none of the several facts, violations of duty, frauds, and wrongs herein set forth and complained of appear of record in any of the records of said Routt county or elsewhere, whereby and whereon plaintiff might found an action at law, but the same rests in proof and are wholly and properly cognizable in a court of equity, and plaintiff says there is no remedy in law whereby the s-veral wrongs and grievances herein complained of can be redressed, and he says his only remedy is by and through the writ of injunction of this honorable court restraining defendant, as treasurer of said county, from collecting or attempting to collect the said taxes or any part thereof.

And plaintiff further says that the residence of the said defendant, as treasurer of said county, is at the town of Yampa, in said county; that said town of Yampa is situated over and across the main range of the Rocky mountains and on the west side thereof; that there is no direct and practicable road at this season of the year to the said town of Yampa; that the only route to said town of Yampa now at all practicable is by way of Rawlins, in the
56 Territory of Wyoming, and there over and through the mountains; that it would require a long time and would cause great delay to give notice to the defendant of this application for an injunction; and plaintiff says that he believes and fears that if the time be taken necessary to give said notice that the said defendant will in the meantime have commenced gathering his said cattle, and that before said notice of said application can be given to him as aforesaid he will have caused a great portion of the damages which he, the plaintiff, seeks by the said writ to avert, and that this case is and the necessities thereof are too urgent to admit of the delay which would be incident to giving such notice.

Wherefore the said plaintiff prays that the said L. H. Breeze, as the said county treasurer of the county of Routt, of the State of Colorado, defendant, and his successors in office, and his and their deputies and agents, may be restrained by an injunction issuing out of this court and under the seal thereof from making distress of the said cattle and horses and other property of the said plaintiff in said county of Routt or elsewhere in said State of Colorado; and if the said defendant has already made distress thereon, then that the said defendant be restrained from proceeding any further therein and from making sale or other disposition of said personal property or any part thereof for the purpose of paying said tax; and to this end and for this purpose plaintiff prays that this court issue a writ of temporary injunction out of this court and under the seal thereof and directed to the said defendant, L. H. Breeze, as county treasurer of said county of Routt, and to his successors in office, commanding

him and them and his and their deputies and agents and each and every of them absolutely to desist and refrain from making distress of the said cattle and horses or other personal property of the said plaintiff in the said county of Routt or elsewhere in the State of Colorado until the further order of this court in regard thereto; and if said cattle and horses and other personal property of the
57 plaintiff has been so taken by said defendant, as county treasurer of said county, or by his deputy or deputies, agent or agents, then commanding him and them and each and every of them and his successors in office absolutely to desist and refrain from proceeding any further therein and from selling or otherwise disposing thereof until the further order of this court in regard thereto, and to release, set free, and turn over said cattle, horses, and other personal property, if so taken possession of, to said plaintiff, his foreman or agent, and to absolutely desist from collecting or attempting to collect the said tax charged against the said plaintiff or any part thereof.

And plaintiff prays that on the final hearing of this cause the said injunction be made perpetual, and for such other and further relief as equity and good conscience may require and as to the court may seem just and proper.

JOHN P. BROCKWAY &
JOHN H. CROXTON,
Attorneys for Plaintiff.

STATE OF COLORADO, } ss:
County of Jefferson, }

Ora Haley, being first duly sworn, on oath says that he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes it to be true.

ORA HALEY.

Subscribed and sworn to before me this 4th day of April, A. D. 1885.

CHESTER C. CARPENTER, *Judge.* [SEAL.]

Endorsed: —.

58 STATE OF COLORADO, } ss:
Jefferson County, }

In the District Court in and for said County.

ORA HALEY, Plaintiff,
vs.
L. H. BREEZE, as County Treasurer of the County of Routt, in the State of Colorado, Defendant. } Order.

On reading and considering the foregoing complaint in the above entitled cause it is ordered that a temporary injunction be issued in

this cause out of this court, under the seal thereof, directed to the said defendant, L. H. Breeze, as treasurer of said county of Routt, in the State of Colorado, and to his successors in office and to his and their deputies and agents as prayed for in said complaint upon the filing of the same and upon the plaintiff giving bond, as required by law, in the sum of eight thousand dollars, the surities to be approved by the clerk of this court.

Witness my hand and seal this 4th day of April, A. D. 1884, at Golden, Colorado.

CHESTER C. CARPENTER, *Judge.* [SEAL.]

Endorsed: Filed in district court Apr. 4th, 1885. W. A. Dill, clerk.

A true copy of said complaint filed in my office Apr. 4, 1885.

W. A. DILL, *Clerk.* [SEAL.]

Attest: W. A. DILL.

Golden, Colo., May 13, 1885.

59 STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District in and for the County of Pitkin and State of Colorado.

ORA HALEY, Plaintiff, }
vs. }
L. —. BREEZE, Defendant. }

Fred. S. Elliott and L. L. Breeze, being duly sworn according to law, depose and say that they were all present at the camp when L. H. Breeze, as treasurer of Routt county, Colorado, had Ora Haley's cattle distrained for taxes, when Ora Haley, the above-named plaintiff, came to said L. H. Breeze and claimed that he had an injunction against said Breeze restraining him from selling said cattle for taxes; that in said conversation between said Breeze and Haley he, the said Haley, stated that he did not intend to prosecute his pretended suit, but would dismiss it as soon as he could get his cattle turned loose; that all he wanted was to get his cattle released from distraint; that the judge who ordered the writ of injunction understood his object, and that the whole matter was explained to the judge that this was his object in obtaining this injunction; that he wanted his cattle turned loose, so they would get fat enough for beef; and further deponents say*eth* not.

FRES S. ELLIOTT.
L. L. BREEZE. [SEAL.]

Subscribed and sworn to before me this 18th day of July, A. D. 1887.

A. M. RANNEY, [SEAL.]
Notary Public.

Endorsed as follows: In district court. Ora Haley *vs.* L. H. Breeze. Affidavits in support of motion to dissolve injunction.

60 STATE OF COLORADO, } *ss*:
County of Pitkin, }

In the District Court of the Ninth Judicial District in and for the County of Pitkin and State of Colorado.

ORA HALEY, Plaintiff,
vs.
LEWIS H. BREEZE, Defendant. } Affidavit of David Miller.

David Miller, being duly sworn according to law, deposes and says that he was a member of the board of county commissioners of Routt county, Colorado, during the year A. D. 1884 and ever since up to the second Tuesday in January, A. D. 1887; that affiant knows of his own knowledge that one notice of the meetings of equalization board of Routt county, Colorado, was posted in accordance with the statute for the year A. D. 1884, and that affiant is informed and believes that all said notices were posted as required by law; that affiant, as a member of the board of equalization, was present in attendance at the meetings of the board of equalization held at the county clerk's office at the county-seat of Routt county, Colorado, on the first and third Mondays of July, A. D. 1884, and knows of his own knowledge that both of said meetings of the equalization board of Routt county, Colorado, were held at the times and place required by law and in the manner required by law, and that Ora Haley failed, refused, and neglected to assess and list his property for taxation that year and was listed and assessed by the assessor, James L. Power, in accordance with the statute and never made any application to board of equalization to reduce his taxes; that on October 6th, 1884, said Haley filed a letter purport-
61 ing to be sworn to by a man signing himself A. G. Edgerton, J. P., but nothing to show whether he was a justice or not, which letter or statement was considered not sufficient evidence of over-assessment by the board of commissioners and they decided they would not reduce his taxes; that this letter is the only evidence or application of any kind presented by said Haley to the board of commissioners for any reduction of his assessment that affiant has ever heard of, and that Haley has had two injunction suits prior to the present one against L. H. Breeze, treasurer of Routt county, Colorado, restraining him from collecting these taxes, one of which has been decided by the supreme court against Haley, holding that these taxes were assessed in substantial compliance with the statute; that Haley has been harassing, threatening, and bulldozing the county officers of Routt county, trying to scare them from performing their duties under the law, and as a means of harassing them he has brought numerous suits for damages besides these injunction suits against the commissioners, treasurer, county clerk, and county attorney, and, as affiant is further informed and believes, is endeavoring to drive honorable county officers from their offices and cause

them to resign, so he can, if possible, get irresponsible men appointed, whom he can use in his own interest instead of their acting in the interests of the county and discharging their duties honestly; that the misrepresentations and assaults which have been made for the last three years by said Haley and a gang of irresponsible howlers upon the officers of Routt county, and the libels and slanders set forth in his various bills of complaint for his numerous injunctions, to which there seems to be no end, are, in the opinion of affiant, the grandest outrage which has ever been perpetrated upon the people and officers of any county or of any country simply because they require of said Haley to pay his taxes, which are
62 legal and regular in every particular; that during the year A. D. 1884 the board of county commissioners of Routt county consisted of W. R. Walker, A. H. Bassett, and affiant, who constituted a full board, and were duly qualified commissioners, and that affiant and W. R. Walker were the two members of said board in attendance at the meetings of said board held on the first Monday of July and the third Monday of July, A. D. 1884.

DAVID MILLER.

Subscribed and sworn to before me this 11th day of July, A. D. 1887.

I. G. VOICE, [SEAL.]
County Clerk of Routt County, Colorado.

F Exhibit.

63 OCTOBER 7, 1886.

Ora Haley, Esq., Laramie county, Wyo.

DEAR SIR: We have this to say in reference to the matter of your taxes: That we are unable to take any action in the matter of reduction of your taxes for the year 1884 for one main reason, that we have no written application on file with our clerk for any reduction, and you are advised that you must pay your taxes, and then, if you desire any relief, you must furnish us with an application for reduction, accompanied by proof in affidavits or witnesses produced before us, showing that you have been erroneously assessed for the year 1884. If your proof is sufficient to satisfy us that your claim for such reduction is just and proper, we will do justice by you in the matter.

Please give the matter your attention at once, if you desire any relief of any kind from the board.

We are compelled to make our rule for the disposal of these reductions and rebate cases uniform, and require all parties who feel ag-rieved at their assessment to make such a showing here as would be sufficient to establish the merits of the claim. We think the board has full power to act in this matter under section 2825, page 823, Revised Statutes of Colorado.

Yours respectfully, THOMAS H. ILES.

STATE OF COLORADO, } ss:
County of Routt, }

Thomas H. Iles, being duly sworn according to law, deposes and says that he is the chairman of the board of county commissioners of Routt county, Colorado; that the foregoing letter addressed by affiant to Ora Haley, dated October 7, 1886, is a true
64 and correct copy of a letter written by affiant to said Haley on the 7th day of October, 1886; that affiant knows of his own knowledge that said Ora Haley has been treated by the board of county commissioners of Routt county and the treasurer of Routt in a fair and honorable manner; that notwithstanding the fair treatment he has received he has continued to bring suit after suit and obtain injunction after injunction, two of which have been dissolved prior to the issuance of the present one; that he has misrepresented, slandered, and abused the board of county commissioners, the treasurer and county clerk and county attorney, and has brought numerous lawsuits against affiant and other county officers in distant portions of the State for the purpose, as affiant believes, of harrassing and driving from their offices by resignation honorable officers whom he cannot use for his own venal purposes; that affiant is informed and believes that said Haley went to affiant's bondsmen and endeavored by threats and insinuations against affiant as a member of the board of county commissioners of Routt county to cause affiant's bondsmen to become uneasy and withdraw from affiant's bond as county commissioner and thereby remove affiant from office, and then, if possible, get some one whom he could use corruptly appointed in place of affiant; that affiant is informed and believes that said Haley has endeavored to get another member of the board to resign; that numerous heavy damage suits have been instituted by Haley as aforesaid against officers, charging them with all kinds of trespasses and conversions of his property, when said Haley well knows that said complaints filed in said causes are false and untrue and defendants therein are not guilty of such doings as charged by him against them; that in the opinion of affiant all these fraudulent and malicious suits brought by him have been brought for the sole purpose of harrassing and intimidating the county treasurer and all other county officers from
65 the performance of their official duties simply because they are making a lawful and honest effort to collect taxes from said Haley, who has litigated the question of these taxes through the Supreme Court, whose opinion sustains the legality of the taxes and the acts and doings of the county officers of said county; but notwithstanding all the litigation and trouble that Haley has put the officers of Routt county to during the last three years in defending two injunction cases and in defending his numerous damage and replevin suits, he now comes with another injunction restraining a county officer from performing his statutory duty in collecting these taxes due from said Haley to Routt county and the State of Colorado, which now amount to almost eight thousand dollars with costs and distress fees due from him; that the tactics and unfair

measures he adopts to evade the payment of his taxes and threats and charges he makes against the county commissioners of Routt county and the treasurer and county attorney are, in the opinion of affiant, the grandest outrage ever perpetrated upon any people.

THOMAS H. ILES.

Subscribed and sworn to before me this 11th day of July, A. D. 1887.

I. G. VOICE, [SEAL.]
County Clerk of Routt County, Colorado.

Exhibit E.

66 HAHN'S PEAK, *Nov.* 1, 1884.

STATE OF COLORADO, } ss:
County of Routt, }

To the treas. of Routt county, Greeting:

You are hereby — and commanded to collect the foregoing taxes levied by State and county authorities for the year 1884, as required by law, and this shall be your warrant therefor.

Witness my hand and official seal this first day of November, A. D. 1884.

C. BRANDEGE, [SEAL.]
County Clerk,
By I. G. VOICE, *Deputy.*

67 Names: Haley, Ora.
Value of personalty: 170,520 dol.
Value of land & improvements: 3,780 dol.
Value of improvements on public lands: 800 dol.
Total valuation: 175,100 dol.
County tax: 1,751 dol., 00 cts.
State tax: 612 dol., 45 cts.
School tax: 350 dol., 20 cts.
Road tax: 875 dol., 50 cts.
Interest on Co. warrants: 350 dol., 20 cts.
State in'st: 210 dol., 02 cts.
Capital: 87 dol., 55 cts.
Stock isp.: 11 dol., 67 cts.
Mills poll: — dol., — cts.
Special poll: — dol., — cts.
No. of dist. value: — dol.
Special school tax: Am't of tax, — dol., — cts.
Total: 4,248 dol., 59 cts.

OFFICE OF THE COUNTY TREASURER OF ROUTT COUNTY,
HAHN'S PEAK, COLO., *July* 10, 1887.

I, Lewis H. Breeze, treasurer of Routt county, in the State of Colorado, do hereby certify that the above and foregoing statement is a true, full, correct, and complete copy of the entries upon the treasurer's books & tax-list for the year A. D. 1884, showing amounts of

the several taxes due and charged against Ora Haley for said year of 1884, as the same was delivered to me by the county clerk of Routt county, Colorado, with the warrant commanding me as treasurer of said county of Routt to collect the same thereto attached, which warrant and list is now in my office at Hahn's Peak, Routt county, Colorado, and that the warrant hereto attached is a true and correct copy of the tax warrant issued to me and attached to said list and now in my office at Hahn's Peak, Routt county, Colorado.

L. H. BREEZE,
County Treasurer of Routt County, Colorado.

68 [Endorsed:] 496. Certified copy of tax warrant & list & entries showing Ora Haley's taxes for 1884 upon county treasurer's books. In district court of Pitkin county. Ora Haley *vs.* Lewis H. Breeze. Exhibit "J." Filed July 26, 1887. John M. Beach, clerk.

69 *Ora Haley's Defense.*

LARAMIE CITY, WYO., *Feb.* 18.

To the editor of the Herald.

DEAR SIR: I dislike newspaper controversies, but my attention was called by a friend to an article which appeared in your paper of Feb. 5, 1887, over the signature of John M. Breeze, county attorney of Routt county, Colorado, which in justice to myself and my friends I think demands some reply from me, which I will briefly try to do, confining myself to the points raised as near as possible, and right here I will state that I never attempted or thought of beating Routt county or the State of Colorado out of a cent of its taxes, neither do I wish it understood that I am in any fight with said county or State. My fight is with the Breeze family, being on the defensive until crowded to the wall. Of this family one is county attorney, one is county treasurer, and another one was county assessor of Routt county for the year 1884, from which the present trouble arises. These innocent zephyrs go about saying there is no malice or ill will on their part connected with this case, but they are simply doing their official duties, which are imperative. This I will leave for the people to be the judge on subsequent developments, for had it not been for the interference of J. M. Breeze my taxes for the year 1884 would have been settled long ago to the satisfaction of the people of Routt county and myself. Attorney Breeze accuses me of being a bluffer. He most certainly does not know me or he would not accuse me thus, and I promise him right now that I will convince him to the contrary before he gets through with me. To refute Breeze's statements about the legality of the proceeding and for the information of the purchasers of the stock at this so-called treasurer's distraint sale I will wager two to one with J. M. Breeze (he to name the amount) that this proceeding was illegal in the manner it was conducted, laying aside every other question. When Mr. Breeze makes the statement that Justice Bennett, of Routt, was "ruled by Hawley
70 and his crowd" he most certainly makes a very wild statement, besides doing Mr. Bennett a gross injustice, for three-fourths

of the people present at the trial were persons who had bought stock at this sale and defendants and directly interested in my defeat, and his brother, L. L. Breeze, of the law firm of Breeze & Breeze, Yampa, was there and appeared for them against me in these cases. When Mr. Breeze says that these purchasers were not permitted to be present with their evidence he says something which is not true. Now, as to what this county attorney has to say in his letter to the purchasers of this stock concerning their appealing and advising the fighting of them at the expense of the county, etc., I have nothing to say. He explains sufficiently for the tax-payer to understand his views and judge his motives. As to the case he refers to before Justice Sayer, of Hayden, I have no comments to make further than to say that I think this was the first case the judge had heard since his election and Mr. Breeze done just what he asserted he would when he took a change of venue from Justice Raney's court at Yampa. Justice Raney has served in this capacity for the last two years past; was re-elected and now serving his second term. He commands as high a regard for honesty and ability as any man in Yampa precinct. Now, one item more concerning the injunction this county attorney was going to have dissolved forthwith. He files a motion with Judge Carpenter to dissolve, and fixes the hearing at Golden the 12th of February before Judge Carpenter, in chambers, with D. E. Parks, county attorney of Lake county, to assist him (and all at the expense of Routt county, I suppose). After hearing the case patiently for three days, Judge Carpenter denied the motion to dissolve the injunction.

Very respectfully, ORA HALEY.

71 A response to the gentle zephyr.

LARAMIE CITY, WYO., *Feb.* 18, 1887.

EDITOR PILOT: I do not much like newspaper controversies, but my attention having been called by a friend to an article which appeared in the Meeker Herald of February 5, over the signature of John M. Breeze, county attorney, Routt county, Colorado, which, in justice to myself and my friends, I think demands some response from me at this time. And right here I will state that I never attempted or thought of beating Routt county or the State out of one cent of the taxes I might justly owe them, neither do I wish it understood that I am in any fight with said county or State, but my fight is with the Breeze family, and brought on by them to satisfy a personal matter I verily believe, and to my misfortune one of them is county attorney, another county treasurer, and another was county assessor of Routt county for the year 1884, at which time this trouble originated; and these innocent zephyrs go about saying there is no malice or ill will on their part in this connection, but they are simply doing their official duty, which is imperative. This I will leave for the people to judge in the light of subsequent developments, for had it not been for the interference of John M. Breeze, this county attorney, my taxes for the year 1884 would have been settled long ago to the satisfaction of the people of Routt

county and myself also. Mr. Breeze in his letter accuses me of bluffing and bulldozing. Mr. Breeze certainly does not know me very well or he would never accuse me thus, and I promise him now that he will be convinced of this fact before he is done with me. And to refute Mr. Breeze's statement in regard to the legality and strai-tforwardness of their proceeding, and for the benefit of purchasers of stock at this so-called treasurer's sale, I will wager $2 to $1—he to name the amount—that this proceeding was illegal in manner in which it was conducted, laying aside every other question. And when Breeze makes the assertion that justice
72 Bennett, of Routt, was ruled by Haley and his henchmen he most certainly states an untruth, for three-fourths of the persons present at the hearing of the replevin suits before Judge Bennett at Routt were purchasers of stock at this sale and defendants in these cases and represented by his brother L. L. Breeze, of the law firm of Breeze & Breeze, Yampa, Routt county, Colorado, and this attack upon Justice Bennett is most uncalled for. Breeze further falsifies when he says that at any time these defendants were not permitted to be present with their evidence. As for what this county attorney has to say, advising them to appeal and fight these cases at the expense of Routt county, I have nothing to say. He explains sufficiently for the people to understand his views and judge his motives. As to the cases referred to heard before Justice Sayre, at Hayden, I have no comments to make. I think this was the first case brought before Justice Sayre since his election, and Mr. Breeze did just as he said he would do when he took a change of venue from Justice Raney's court at Yampa; and I will say Justice Raney has served as justice for his precinct for the past two years, was re-elected, and is now on his second term of service, and for honor and strai-tforwardness no one stands higher in Routt county. Now, one item further concerning the injunction which this able county attorney was going to have dissolved forthwith. He files his motion for its dissolution before Judge Carpenter, to be heard at Golden on the twelfth of February, the judge sitting in chambers. Breeze employed D. E. Parks, of Leadville—at the expense of Routt county, I presume—to assist him. After patiently hearing the case for three days the judge refused to dissolve the injunction.

Very respectfully, ORA HALEY.

73 That upon the trial of said motion he refused to allow defendant to introduce evidence in support of affirmative matter in answer of defendant; to which ruling defendant excepted then and there. The plaintiff duly excepted to the order of the judge transferring said cause to Routt county district court. The foregoing is all the evidence that was introduced upon the trial of said motion; and the defendant having duly excepted to the order and ruling of said court or judge in denying said motion to dissolve injunction and continuing said injunction in full force and effect, and inasmuch as the foregoing matters and exceptions do not appear of record,

this bill of exceptions is tendered and the same is signed, sealed, and delivered accordingly.

THOMAS A. RUCKER, [SEAL.]
District Judge, 9th Judicial District of Colorado.

Endorsed as follows: No. 2098. In district court. Ora Haley *vs.* Lewis H. Breeze. Bill of exceptions. Original. Filed July 28th, 1887. John M. Beech, clerk. Filed in supreme court Aug. 11, 1887. James A. Miller, clerk. J. M. Breeze, att'y for def't.

74 And on, to wit, December 9, A. D. 1887, the same being one of the juridical days of the December term, A. D. 1887, of said supreme court—present, Hon. William E. Beck, chief justice; Hon. Joseph C. Helm, associate justice; Hon. Samuel H. Elbert, associate justice; Frederick Cramer, Esq., sheriff of Arapahoe Co., by F. A. Richardson, bailiff; James A. Miller, clerk—the following further proceedings were had and entered of record in said cause, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from the district court of Pitkin Co.

At this day, this cause coming on to be heard upon the motion of appellant to shorten the time prescribed by the standing rule of this court for the filing of abstracts of record and briefs herein, and upon consideration thereof, and good cause therefor appearing to the satisfaction of the court that —, it is considered that said motion be sustained. It is therefore ordered by the court that said appellant file his argument within five (5) days from this day; that said appellee answer within fifteen (15) days thereafter, and that appellant reply thereto within five (5) days next thereafter, at the expiration of which time this cause be and stand submitted to the consideration and judgment of the court.

And afterwards and on January 27th, A. D. 1888, the same
75 being a juridical day of the December, A. D. 1887, term of said supreme court—present, Honorable William E. Beck, chief justice; Honorable Joseph C. Helm, associate justice; Honorable Samuel H. Elbert, associate justice; Albert Weber, Esq., sheriff of Arapahoe county, by F. A. Richardson, bailiff; James A. Miller, clerk—the following further proceedings were had and entered of record in said cause, as follows:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from the district court of Pitkin county.

At this day comes appellant, by D. E. Parks, Esq., his attorney, and appellee, by W. T. Hughes, Esq., his attorney, also comes; and upon motion of said appellee it is ordered by the court that the rule

heretofore entered for appellee's brief and the time for filing supplemental abstract of record by appellee be and stand suspended until the motion of said appellee for leave to file supplemental bill of exceptions herein shall be passed upon by the court.

And on, to wit, February 3, A. D. 1888, the same being a juridical day of the December, A. D. 1887, term of said supreme court—present, officers as noted on January 27th*th* herein—the following further proceedings were had and entered of record in said cause, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from district court of Pitkin county.

76 At this day it is ordered by the court that appellee have leave to file supplemental transcript of the bill of exceptions heretofore and on January 4th, last past, lodged with the clerk of this court; and that said appellee have leave to file his supplemental abstracts and answer herein instanter.

And thereupon and on the same day said appellee filed in the office of said supreme court his supplemental record in words and figures as follows, to wit:

77 ORA HEALEY, Plaintiff,
vs.
LEWIS H. BREEZE, Defendant.

Plaintiff having duly notified defendant in writing filed herein that he would move the court to amend the record in this cause, and the plaintiff, after such notice, having appeared and filed his motion and asked for a hearing, which is now granted, and it appearing that the bill of exceptions filed in this case and now of record herein was prepared *ex parte* by the defendant, and that the hereinafter matters were omitted therefrom, and the plaintiff now offering evidence of these facts, it is now ordered, considered, and adjudged that the bill of exceptions in this cause be amended and made to show that at the beginning of the hearing upon the motion made by defendant to dissolve the injunction the plaintiff, Healey, by counsel, objected to any hearing or introduction of evidence or any consideration of the pleas of new and affirmative matter set up and pleaded in the answer filed in this cause; authorities were read by plaintiff showing such to be the law, and the defendant, by counsel, stated — he supposed such to be the law from the authorities read; wherefore, after argument by plaintiff's counsel, the judge held that the pleas of new and affirmative matter could not be heard, gone into, or considered at this hearing in vacation, and that no evidence now offered or introduced would be considered as applicable to the pleas of new and affirmative matter at this hearing; and also that the plaintiff objected to the introduction of

all evidence offered to prove any matter contained in the pleas of new and of affirmative matter; and also the record should show that the plaintiff objected to the affidavits of David Miller and also of Thomas N. Iles as scandalous and as irrelevant, and that
78 neither of said affidavits was competent or admissable to prove any notice of the meeting or meetings of the board of equalization in Routt county for the year 1884, and the judge held that what is required to be of record must be proved by record, and that while he would allow defendant to develope his cause in his own way and introduce what evidence and documents he chose, still he, the judge, would not consider such evidence as competent to prove a record or what should be proved a record; still he would hear all the defendant had to say, and from this view the evidence was admitted.

Plaintiff asking at the commencement of the hearing to file a printed plate showing the assessment-roll in question in lieu of the one made by hand, the court granted said request, defendant not objecting.

The following copy was accordingly substituted, to wit:

79 Name: Haley, Ora.
Description of lands: Six ¼ sec.
No. acres: 960.
Value of lands: 2,880.
Value of improvements: 900.
Value of improvements on public lands: 800.
No. of horses: 165.
Horses—value, 6,845.
Mules:
No.: 2. Value: 100.
Cattle:
No.: 8,200. Value: 163,000.
Carriages:
No.: 3. Value: 200.
Capital invested in merchandise: 200.
Amount of all property: 175.
Total: 175,100.
Lay.

STATE OF COLORADO, } ss:
County of Routt, }

I, I. G. Voice, county clerk and recorder of Routt county, Colorado, do hereby certify that I have carefully compared the above with the assessment-roll for the year 1884 for said county & State, and that the above is a precise, exact, and identical copy of said roll of the assessment of said Haley for said year, and that it is a full, true, and exact copy of Ora Haley's assessment for said year as now remains of record in my office.

Witness my hand and official seal this 20th day of April, 1887.

[SEAL.] I. G. VOICE,
Clerk & Recorder for Routt County, Colo.

80 And forasmuch as none of said matters appears of record the plaintiff tenders this his supplemental record, and asks that the same be signed, sealed, and be made a part of the record pursuant to the statute in such cases made and provided, and the same is accordingly done this November 25th, 1887.

THOMAS A. RUCKER, [SEAL.]
District Judge.

Endorsed as follows:
No. 496. Ora Haley *vs.* Lewis H. Breeze. Bill of exceptions of plaintiff. Filed Nov. 25th, 1887. John M. Beach, clerk.

81 STATE OF COLORADO, } ss:
County of Pitkin, }

In the District Court of the Ninth Judicial District of the State of Colorado within and for the County of Pitkin.

ORA HALEY, Plaintiff,
vs.
LEWIS H. BREEZE, Defendant. } Demurrer.

Plaintiff demurs to the defense of former action pending, beginning at the 11th paragraph of the answer, and says it does not state facts sufficient to constitute a ground of defense.

That it does not show the record of the cause plead in defence or of the proceedings therein.

Plaintiff demurs also to the defence plead of former adjudication, commencing at the 12th paragraph of the answer, and for cause says—

That it does not state facts sufficient to constitute a cause of defence.

That the record of the former suit is not plead and set forth.

That the pleadings of the former suit are not plead and set forth.

That it is not shown that the causes are one and the same.

By W. S. HUGHES,
Attorney for Plaintiff.

Endorsed as follows.
No. 496. In the district court of Pitkin county. Ora Haley, pl't'ff, *vs.* Lewis H. Breeze, def't. Demurrer. Filed July 26th, 1887. John M. Beach, clerk. W. S. Hughes, att'y for pl't'ff.

82 STATE OF COLORADO, } ss:
County of Pitkin, }

I, John M. Beach, clerk district court in and for the aforesaid county and State, do hereby certify that the papers hereto attached are the original demurrer and the bill of exceptions filed in a certain cause lately pending in said district court, wherein Ora Haley was plaintiff and Lewis H. Breeze was defendant, docket No., 496.

In testimony whereof I have hereunto set my hand and affixed

my official seal, at my office, in Aspen, in said county and State, this 2nd day of January, A. D. 1888.

[SEAL.] JOHN M. BEACH, *Clerk.*

Endorsed as follows: 2098. Ora Haley, appellee, *v.* —— Breeze, appellant. Supplemental record. Lodged in office of clerk of supreme court this 4th day of January, A. D. 1888. James A. Miller, clerk. Filed by leave of court Feb. 3, 1888. James A. Miller, clerk.

83 And on, to wit, February 10th, A. D. 1888, the same being a juridical day of the December term, A. D. 1887, of said supreme court—present, officers as heretofore and on January 27th, A. D. 1888, noted—the following proceedings were had and entered of record, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from district court of Pitkin county.

At this day it is ordered by the court that the reply of appellant herein be filed pursuant to the terms of stipulation filed.

And on, to wit, April 27, A. D. 1888, the same being one of the juridical days of the April, A. D. 1888, term of said supreme court—present, Honorable William E. Beck, chief justice; Honorable Joseph C. Helm, associate justice; Honorable Samuel H. Elbert, associate justice; Albert Weber, Esq., sheriff of Arapahoe county, by F. A. Richardson, bailiff; James A. Miller, clerk—the following further proceedings were had and entered of record in said cause, to wit:

LEWIS H. BREEZE, Appellant,
v.
ORA HALEY, Appellee.

Appeal from district court of Pitkin county.

At this day comes appellant, by H. B. Johnson, Esq., his attorney, and comes also appellee, by L. C. Rockwell and W.
84 T. Hughes, Esquires, his attorneys, and thereupon this cause is argued orally and submitted to the consideration and judgment of the court.

And afterwards and on, to wit, the fourth day of May, A. D. 1888, the same being a juridical day of the April, A. D. 1888, term of said supreme court, the following furt-er proceedings were had and entered of record in said cause by said court, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from district court of Pitkin county.

At this day, this cause coming on to be heard as well upon the

transcript of proceedings and judgment had in said district court in and for the county of Pitkin as also upon the matters assigned for error herein, and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and it appearing to the court that there is manifest error in the proceedings and judgment aforesaid of said district court, it is therefore considered and adjudged by the court that the judgment aforesaid of said district court be, and the same is hereby, reversed, annulled, and altogether held for naught, and that this cause be remanded to said district court with directions to dismiss the complaint.

It is further considered and adjudged by the court that said appellant do have and recover of and from said appellee his costs in this behalf expended, to be taxed, and that he have execution therefor; and let the opinion of the court filed herein be recorded.

And on, to wit, May 7th, A. D. 1888, there was filed in the office of the clerk of said supreme court the opinion of said court in said cause, which is in words and figures as follows, to wit:

85 LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee. } No. 2098.

Appeal from the district court of Pitkin county.

This is the same cause of action which was brought before this court on appeal from the district court of Clear Creek county and decided at the April term, 1887, the parties also being the same. The appellee, Haley, was the complainant below in both cases, the subject-matter of his complaint being the illegal assessment and levy of taxes against his property, real and personal, in Routt county for the year 1884, and seeking injunctive relief in both cases to restrain the appellant, the county treasurer of Routt county, from enforcing the collection of said taxes.

In the original complaint it was charged that he was assessed for more land and personal property than he owned in said county; that the aggregate valuation was too great, making him liable for an amount of taxes greatly in excess of his due portion thereof. Other charges in the bill were that said assessor knowingly and wilfully omitted to list and assess other property in said county for the purpose of increasing the taxes of said Haley and making them greater than his just share thereof would otherwise be; that no tax-list had ever been left with him or his agent by the said assessor to enable him to make out a list of his taxable property with the correct valuation thereof; that the county clerk never gave any notice of the meeting of the board of county commissioners to act as a board of equalization in the year 1884; that the board held no such meeting for that year; that as soon as the petitioner learned the
86 incorrect and unjust assessment of his property he took steps to have the sum corrected by filing with the county commissioners an application for the purpose, which was ignored and not

acted upon by the board of equalization; that he was unjustly charged with the sum of $4,248.59 upon his property in said county for said year 1884, but on account of being charged with more property than he had in said county and on account of omitting property of other persons liable to taxation from assessment he does not know what the amount of his just taxes are; that he has always been able and willing to pay the just amount. The complaint charges further that the said Breeze, treasurer, was then about to make distraint and sale of the plaintiff's cattle and personal property to enforce payment of said sum of $4,248.59 tax.

The prayer of the complaint is that said county treasurer be restrained by injunction from making distress and sale of the said cattle, horses, and other property of the plaintiff, and that if he had already made distress that he be restrained from proceeding any further therein and from making sale or other disposition of the personal property until the further order of the court, from taking any further steps to collect the taxes aforesaid, and that on final hearing the injunction be made perpetual, and for such other and further relief as equity and good conscience may require. A temporary injunction, in accordance with the prayer of the bill, was granted December 7th, 1886.

Subsequently, on July 1st, 1887, said Haley filed in the district court of Pitkin county the complaint in the present case, praying injunctive relief against the collection of the same taxes, and that the same officer, the appellant herein, be restrained from selling his cattle and property to satisfy said taxes. The same objections
87 are therein alleged—that he was assessed for more property than he owned in Routt county; that the valuation was too great, and that the assessment and levy of the taxes upon his property were invalid for various reasons alleged, some of which had not been stated in the complaint filed in the former action. He also averred other items of damage which would result to him from a sale of his cattle, and other alleged equities than those previously mentioned.

This complaint omits to mention several facts stated in the former complaint, as the quantity and value of land and the number and value of horses and cattle owned by him in Routt county in the year 1884.

The only relief prayed in this bill is that the appellant and his deputies, etc., be temporarily restrained from distraining and selling any of his stock for the satisfaction of said taxes.

Upon the filing of this bill an injunction was ordered to issue according to the prayer thereof. The appellant answered July 25th, averring, among other things, that the validity of the taxes complained of had been fully adjudicated and established in a prior suit between the same parties, involving the same issues mentioned in the injunction suit instituted in the district court of Clear Creek county, setting out the complaint filed therein by said Haley, the steps taken therein, the judgment of this court sustaining the validity of the assessment, and interposing the former adjudication as a complete bar to this action.

Upon the filing of this answer appellant moved to dissolve the temporary injunction. This motion was heard by the district judge at chambers on the 27th day of July upon the pleadings and proofs of the respective parties, and denied; from which order
88 denying the application to dissolve this appeal is prosecuted.

Other facts are stated in the opinion.

BECK, *C. J.:*

The record discloses that the appellee, Haley, has instituted and prosecuted two injunction suits against the appellant for the accomplishment of the same purpose, to wit, to prevent him from enforcing, as county treasurer of Routt county, the collection of taxes assessed against the personal property of the appellee therein for the year 1884 by distraint and sale of a portion of the same. The first suit was brought and prosecuted in the district court of Clear Creek county and the present action in the district court of Pitkin county. The complaint in the former case stated substantially the same grounds for enjoining the collection of these taxes as that filed in the latter case, the principal ground being the invalidity of the assessment. Additional grounds for equitable relief are alleged in the present complaint, but they all existed at the time of the former action, and it is not even alleged that they were unknown to the appellee at the time the original suit was pending.

The doctrine of the authorities is that, when a complainant in equity brings his suit, he must present to the court all the grounds then existing for its support. He is not at liberty to present a portion of the grounds upon which his claim for equitable relief depends in one suit and, if that fail, to present the rest in another action. The former adjudication is held to be conclusive in a subsequent proceeding between the same parties as to every matter properly involved and which might have been raised and determined it it.

Ruegger *v.* I. & St. L. R. R. Co., 103 Ill., 456.
Kurtz *v.* Carr, admin'r, 105 Ind., 574.
Stark *v.* Starr, 94 U. S., 477.

89 A copy of the complaint filed by said Haley in the former suit was set out in the answer in this cause, showing the identity of the causes of action, of the relief sought, of the parties, and that they prosecuted and defended in the same character; and it is therein averred that this court, by its opinion and judgment of April 30th, 1887, pronounced in that case, held the said assessment to be valid, and that the injunction proceedings could not be maintained, which former adjudication is alleged to be a complete bar to the present action. This answer stands untraversed; and the fact, therefore, of a former adjudication of the same subject-matter between the same parties is decisive not only of this appeal, but of this action. It appears from the record that there was a full and complete adjudication in the original suit of the validity of these taxes, and that the authority of the appellant, as treasurer of Routt county, to enforce their collection was therein sustained. There was,

therefore, no warrant of law for granting this second injunction to restrain him from the performance of that duty.

The point so strongly insisted upon by counsel for appellee that the subject-matter of the original injunction proceedings and the judgment of this court therein could not be legally interposed as an estoppel to this second suit for the reason that the same constituted new matter, and was therefore inadmissible under the rules of chancery practice, is without merit and untenable. The authorities cited in support of the proposition announce no such doctrine. They refer rather to cases where the new matter is not responsive to the allegations of the bill and to new matter which is alleged by way of confession and avoidance, as where the alleged equities are admitted, but other facts are interposed by way of defense thereto.

90 The plea of *res judicata* filed herein is responsive to the complaint. It concedes no equities whatever in the allegations of the complaint, but is an unequivocal denial of all the propositions upon which the complainant's equities rests. In effect it is a denial of the equities set up both in this and in the former complaint, and it alleges that the whole subject-matter thereof was adjudicated in the former action, wherein it was finally determined that the complainant was not entitled to equitable or injunctive relief. This plea, untraversed, leaves nothing for the court to try. The equities of the complaint are not only denied but disproved, leaving nothing for the injunction to rest upon. 2 High on Injunctions, title Dissolution, secs. 1467 to 1474, and sec. 1586, and authorities cited.

We have adverted to the fact that the present complaint contains averments of equities not stated in the original complaint, and that it omits facts which were stated therein; also that these additional equities existed at the time of the filing of the former complaint, and that there is no averment that they were then unknown to the complainant. It is well settled that the same subject-matter cannot be relitigated and redetermined by thus essentially varying the manner of stating the cause of action. If by omitting a portion of the grounds of action from the first complaint and a portion of the facts from the second an estoppel could be avoided, the result would be attained, not upon the legal ground that the subject-matter of the second suit had not been adjudicated in the former suit, but through the ingenuity of counsel in so drafting the pleadings as to avoid the legal effect of the former adjudication. Causes of action might be thus split up and prosecuted in fragments, part at one time and part at another time, if such practice were permissible, and the doctrine of *res judicata* would not only be nullified, but litiga-

91 tion would become endless. City of Denver *v.* Lobenstein, 3 Colo., 216; Stark *v.* Starr, *supra*, p. 487; 1 High on Injunctions, sec. 39.

The court below erred, therefore, in granting the second injunction. This error may readily have occurred under the circumstances, the application being made to a different court. But when its attention was called to the prior proceedings (including the judgment of this court upon the hearing of the motion to dissolve) by the answer of the appellant and the proofs offered the injunction

should have been promptly dissolved. The proceedings had in the original suit did not constitute new matter, in the legal sense of that term as applicable to proceedings of this nature, and were admissible under chapter VII of the Code of Civil Procedure, title injunctions, as well as under the rules of chancery practice, and gave the judge in vacation ample authority to dispose of the application as effectually in accordance with the principles of law as he might have done in term. All the equities now claimed existed at the institution of the original suit, and the county treasurer was only proceeding to perform the same duty from the execution of which he had been previously restrained when the bill was filed in the present case. There was no new cause of action, and the appellant was not entitled to bring a new suit for the same purpose involved in the former proceeding.

City of Denver *v.* Lobenstein, *supra.*
1 High on Injunctions, secs. 39, 40.
Stark *v.* Starr, *supra.*

If it were necessary to consider the case further, it is clear that the appellee has not now and never had any standing in a court of equity concerning the assessment complained of. This is
92 shown by the admissions contained in his original complaint respecting the property owned by him in Routt county in 1884, the values of the same, and by his failure to aver, in either complaint, a tender of the taxes due according to his own admissions.

In his original complaint he charged that he had been assessed as the owner of 960 acres of land in Routt county, at a valuation of $2,880, whereas he owned but 640 acres, the value thereof being $1,920; that he was assessed for 165 horses, valued at $6,845, and owned but 141, their value being $4,935, and that he was assessed for 8,200 head of cattle, valued at $163,000, but owned only 6,300, their value being $120,000. He further charged that this excess in the valuation of his property aggregated about $40,000 and made him liable for about $1,000 more than his ratable portion of the taxes of said county for the year 1884.

Before a party is entitled to equitable relief against an excessive tax, he must pay what he concedes to be due. The authorities hold that he who would have equity must do equity, and when the valid portion of a tax can be easily distinguished from the portion alleged to be invalid and it has not been paid or tendered, injunctive relief will be denied. The collection of the legal portion of a tax, which is generally the greater portion thereof, as appears to be true in the present instance from the admissions just cited from the appellee's original complaint, will not be restrained pending a litigation in order to determine the validity of the disputed portion.

High on Injunctions, sec. 363.
2 Desty on Taxation, 657.
National Bank *v.* Kimball, 103 U. S., 732.
Rowe *v.* Peabody, 102 Ind., 198.
Wilson Treas. *vs.* Longendyke, 32 Ks., 267.

93 It appears from the supplemental transcript filed by the appellee that a demurrer to the appellant's answer to the complaint in the present case was filed by the appellee prior to the hearing of the motion to dissolve the injunction. It does not appear from the record whether this demurrer was disposed of or not, or whether its existence was known at the time of the hearing to either the court or to appellant's counsel. Months after the record had been filed in this court, counsel for the appellee procured to be executed by the judge of the court below a supplemental bill of exceptions, but it, like the rest of the record, is silent as to any action on the demurrer or any objection to proceeding with the hearing of the motion to dissolve the injunction.

While we are not called upon to notice this pleading in the condition of the record described, we hold that the answer is sufficient in form and substance to warrant the dissolution of the injunction, and as the only relief prayed for in this case is a temporary injunction to restrain the appellant as treasurer of Routt county from proceeding to enforce the payment of said taxes, the order denying the motion to dissolve the injunction will be reversed and the cause remanded with directions to dismiss the complaint.

Judgment reversed.

Endorsed: Filed in supreme court May 7, 1888. James A. Miller, clerk.

94 And afterwards and on the 11th day of May, year aforesaid, an order was entered of record by said court as follows, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from district court of Pitkin county.

At this day comes appellee, by W. T. Hughes, Esq., his attorney, and upon his motion and for good cause shown, it is ordered by the court that said appellee have time and until ten days from the expiration of the standing rule within which to file his petition for rehearing and brief in support thereof herein.

And on, to wit, June 7th, A. D. 1888, came said appellant and filed in the office of the clerk of said court in said cause the following motion, in words and figures, to wit:

STATE OF COLORADO:

In the Supreme Court.

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Now, at this day, comes said appellant and moves the court to enter

final judgment dismissing the complaint in said cause instead of remanding the same for further proceedings in the court below.

D. E. PARKS & H. B. JOHNSON,
Attorneys for Appellant.

(Endorsed as follows:)

2098. Lewis H. Breeze *vs.* Ora Haley. Motion for final judgment. Filed in supreme court Jun- 7, 1888. James A. Miller, clerk. D. E. Parks & H. B. Johnson, att'ys for appellant.

95 And afterwards and on, to wit, June 15th, A. D. 1888, the same being one of the juridical days of the April term aforesaid of said supreme court—present, Hon. William E. Beck, chief justice; Hon. Joseph C. Helm, associate justice; Hon. Samuel H. Elbert, associate justice; Albert Weber, Esq., sheriff of Arapahoe county, by F. A. Richardson, bailiff; James A. Miller, clerk—the following order denying appellee's petition for a rehearing was entered of record, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from the district court of Pitkin county.

At this day this cause coming on to be heard upon the petition of said appellee for a rehearing herein, and the same having been heretofore argued by counsel and submitted to the consideration and judgment of the court, and upon consideration thereof and being now fully advised in the premises, it is ordered and adjudged by the court that said petition be, and the same hereby is, overruled; and let the opinion of the court filed herein be recorded.

And thereupon the said opinion of the court was filed in the office of the clerk of said supreme court for record, and is in words and figures as follows, to wit:

96 No. 2098.

On rehearing.

ELBERT, *Justice:*

In view of the gravity of the complaint made in the petition for rehearing, I have examined the record, not only in this case but the record in the former case decided at the April term, 1887, the decision there being also the subject of criticism in the petition for rehearing. I have done this with the view of seeing whether in the pressure of business any substantial fact had been overlooked or substantial injustice done in either case.

The grounds of the decision rendered in April are plain and simple and cannot be questioned. The plaintiff failed to return to the assessor a list of his taxable property as required by statute and his property was listed by the assessor as was his duty under the

statute. If he was assessed too high or for too much property it was his duty to apply to the board of equalization for correction of these errors, which he failed to do either of his own accord or at the repeated solicitation of the board of county commissioners. Having neglected all the means and modes provided by the statutes for the correction of errors in his assessment, he cannot correct them by an appeal to the chancery jurisdiction of the courts; and to these plain propositions the opinion cites abundant and well-considered authorities. It was further urged in that case that the assessor did not complete the plaintiff's assessment list within the time prescribed by statute and it was therefore without validity. It was held, however, that this was not fatal and that there was a sufficient compliance with the statute. Upon the authority cited I have no doubt about the correctness of this conclusion.

In his petition for rehearing in that case counsel for the ap-
97 pellee urged that the objection to the assessment "chiefly relied upon" was that it was made by the assessor "in the presence of and under the directions of the board." There was nothing to prevent the assessor from making out his list in the presence of the county commissioners or any one else, nor did the record disclose any proper or sufficient evidence that it was made under the directions of the board, for which reason it was not considered a good ground for rehearing.

Our decision in that case should have ended this litigation. The plaintiff's counsel, however, drafted another bill substantially the same as the bill in the former case, went to another county and to another judge and asked for a temporary injunction substantially upon the same grounds and for the same reasons as set forth in his former bill. An injunction was granted; the defendant appeared and answered, first traversing the allegations of the bill, and for further answer set up the fact that another suit was pending in the same cause of action, in which a decision of this court had been rendered, and moved to dissolve the injunction. Upon the hearing of the motion to dissolve he offered in evidence, *inter alia*, the summons and the complaint in the former suit and the opinion of the court, which the court refused to consider. This was error, and upon this question there can be no doubt. The proceedings of the original suit did not constitute new matter and was a complete defense to the action.

It is insisted by counsel that there was an agreement between counsel in the presence of the court upon the hearing of this motion that the answer of what is termed "new matter" should not be considered by the court, and it was made a ground of serious complaint that we have annulled the agreement of parties in this respect.
98 In support of the proposition that there was an agreement of this kind by counsel we are cited to the supplemental record filed by the appellee, which recites, among other things, as follows: "It is now ordered, considered, and adjudged that the bill of exceptions in this cause be amended and made to show that at the beginning of the hearing upon the motion made by defendant to dissolve the injunction the plaintiff Haley, by counsel, objected to any hear-

ing or introduction of evidence or any consideration of pleas of new and affirmative matter set up and pleaded in the answer filed in this cause, and authorities were read by plaintiff showing such to be the law, and the defendant, by counsel, said he supposed such to be the law upon the authorities read; wherefore, after argument by plaintiff's counsel, the judge held that the pleas of new and affirmative matter should not be heard, gone into, or considered at this hearing in vacation, and that no evidence now offered or introduced would be considered as applicable to the pleas of new and affirmative matter at this hearing, and also that the plaintiff objected to the introduction of all evidence offered to prove any matter contained in the pleas of new and affirmative matter." Much of this is strange matter for a bill of exceptions, and we are surprised that it is seriously urged that it constitutes an agreement between counsel upon the hearing of the motion to dissolve the injunction that the pleas of what is called new matter should not be considered. Plaintiff's counsel read authorities to the effect that such and such was the law, and defendant's counsel said he supposed such to be the law upon the authorities read. It is sufficient to say that it is not competent for counsel to stipulate as to what the law is so as
99 to bind this court. As a matter of fact they do not appear to have stipulated in the court below, as the record shows that they did offer to prove the pendency of the former suit, but the court refused to consider the evidence on the ground that it was new matter, and an exception was taken thereto which was made the basis of an assignment of errors. The plea of a suit pending was not new matter, as held in the opinion of Chief Justice Beck, and the court below erred in treating it as new matter, and had the counsel below entered into a written stipulation that it was new matter which could not be considered on an application to dissolve an injunction it would not have bound this or any other court.

We do not care to restate the grounds of our decision. They are stated clearly and definitely in the opinion delivered by the chief justice, and are abundantly supported by the authorities which he cites. The whole proceeding in this case appears to us to be an unwarranted attempt to have matters readjudicated which have already been decided against the plaintiff, and to further harass the authorities of the county and delay the collection of its revenue.

The petition for rehearing is denied.

Endorsed: Filed in supreme court June 15, 1888. James A. Miller, clerk.

100 And afterwards and on the same day last aforesaid—present, officers of the court there noted—the following further proceedings were had and entered of record in said cause, to wit:

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee.

Appeal from the district court of Pitkin county.

This cause now coming on to be heard upon the motion of appellant heretofore submitted for the entry of judgment by this court reversing the judgment of said district court and to dismiss the complaint of said appellee therein, and said appellee, by his attorney, L. C. Rockwell, Esq., in open court, heretofore and on June 7th instant, having freely consented that in the event the petition of appellee for rehearing in this cause then pending should upon consideration thereof be by this court denied that the judgment entered heretofore and on May 4th last past herein might be vacated and judgment entered in this court dissolving the injunction and dismissing appellee's complaint, and upon consideration of said motion first had, it is considered by the court that said motion be sustained. Wherefore it is ordered and adjudged by the court that the judgment entered in this cause on, to wit, May 4th ultimo, be, and the same hereby is, vacated and for naught held. It is further considered and adjudged by the court that the judgment of said district court in and for the county of Pitkin in this cause overruling appellant's motion to dissolve the injunction therein be, and the same is hereby, reversed, annulled, and altogether held for naught; that said injunction be and stand dissolved, and the complaint therefor filed therein by said appellee (plaintiff in said district court) be, and the same is hereby, dismissed.

101 It is further considered and adjudged by the court that said appellant do have and recover of and from said appellee his costs in this behalf expended, to be taxed, and that he have execution therefor, and let the opinion of the court filed herein be recorded.

It is also ordered by the court that the execution of this judgment be stayed until Tuesday, the 19th instant, to permit said appellee to present to the chief justice of this court his petition for writ of error from the Supreme Court of the United States.

102 STATE OF COLORADO, *ss:*

Supreme Court.

I, James A. Miller, clerk of the supreme court of the State of Colorado, hereby certify the foregoing to be a true and complete copy of a duly certified transcript of the record and proceedings of a certain cause lately pending in the district court of Pitkin county and State aforesaid, wherein Ora Haley was plaintiff and L. H. Breeze, treasurer of Routt county, Colorado, was defendant, filed in said supreme court upon appeal from the judgment of said district court by said defendant, with his assignments of error thereto appended, as also all proceedings had in said supreme court upon said appeal, save and except the rules entered in said cause for the filing

of abstracts of record and briefs by the respective parties, the motion to dismiss, and the order assigning the cause to the supreme court commission for consideration and the order vacating same, as the same appear from the records and files in said cause in my office, with the original complaint for writ of error from Supreme Court of the United States and the order of the chief justice of this supreme court endorsed thereon denying the same.

Witness my hand and the seal of said supreme court hereto affixed, at my office, in the city of Denver, this 18th day of June, A. D. 1888.

Seal Supreme Court, State of Colorado.

JAMES A. MILLER,
Clerk Supreme Court, State of Colorado.

Cost of transcript for pl'ff in error, $68.40.
JAMES A. MILLER, *Clerk S. C.*

103 STATE OF COLORADO:

In the Supreme Court Thereof, to the April Term, A. D. 1888.

LEWIS H. BREEZE, Appellant,
vs.
ORA HALEY, Appellee. } No. 2098.

To the Honorable William E. Beck, chief justice of the supreme court of the State of Colorado:

Your petitioner, Ora Haley, the appellee in the case of Lewis H. Breeze against petitioner, the same being numbered 2098 upon the docket of the supreme court of the State of Colorado, the said court being the highest court of judicature in said State in which said cause can be heard and determined, now comes and humbly petitions and respectfully shows unto your honor that said cause was decided on May 4th, 1888, and that a motion for a rehearing was denied on the 15 day of June following and judgment entered on said last day in said court.

Your petitioner further represents unto your honor that he is advised by his attorneys and counsel, and therefore he verily believes, that said cause involves questions arising under the Constitution, statutes, and laws of the United States, and that among those involved your petitioner particularly specifies section 1 of the XIV amendment to the Constitution of the United States, which provides, among other things, "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor

104 deny to any person within its jurisdiction the equal protection of the laws;" that the main question involved in said cause is the sequestration of your petitioner's property under a so-called judgment for taxes, which supposed judgment for taxes is found at paragraph 4 of the complaint in said cause and which judgment fails to describe your petitioner's lands or to value any of your petitioner's property; or, in other words, for want of

description or valuation the judgment-roll is void. The judgment is void for uncertainty.

Felton *v.* R. R. Co., 3 Sawyer, 22.
People *v.* San Francisco Savings Union, 31 Cali., 132.
Woods *v.* Freeman, 1 Wall., 398.
Hurd *v.* Hamill (Colo., 1887), 14 Pac. Rep., 126.

An inspection of the record in this last case shows that a judgment for taxes in Colorado is void for the sole reason that the property is not valued. This reason alone was the sole ground upon which it was held in that case that a judgment for taxes was void in Colorado (see pp. 36 & 37, abstract of record in that case); also Trevor & Colgate *vs.* Hamill, case No. 916, circuit court of the United States, district of Colorado, Hallet, judge, for same point, likewise decided.

At pp. 38–44, appellee's argument-in-chief, the invalidity of the judgment herein is discussed.

Your honor will also observe that in paragraph 7 of the complaint it is averred that no notice of the meeting of the board of equalization was given or published before the entry of said supposed judgment for taxes, as required by sec. 2862, Gen. Stat. Colo. (see p. 38 appellee's argument and brief), and that this essential matter of record, which must be and remain of record, is denied
105 upon information and belief (paragraph VI of answer); that under our practice this is an admission upon the record that no notice was given.

70 Am. Dec., 628–630.

And that in no case are denials upon information and belief sufficient upon a hearing to dissolve in vacation (pp. 22–28, 47, appellee's argument and brief); that the *ex parte* affidavits offered and excluded (folio- 22–23) did not prove a fact which must be and appear of record of the proceedings of an inferior tribunal.

Downing *v.* Florer, 4 Colo., 209.
Runkle *v.* U. S., 122 U. S., 543, 556.
Brown *v.* Keene, 8 Peters, 141.
See cases cited in petitioner's brief, pp. 44–50.

That for the foregoing reasons your petitioner is advised and therefore he verily believes that said judgment for taxes is absolutely void, and, it being void, the Federal Constitution above quoted is involved, and that under it the judgment involved is not due process of law as defined and applied under the laws of the United States.

Santa Clara Co. *v.* R. R. Co., 18 Fed. Rep., 385, 398, 406, Field, J.

And that the conclusions reached by the supreme court of Colorado are repugnant to the constitutional provision above mentioned.

Your petitioner further represents that at the hearing of this cause and also a former cause, to wit, No. 2015, referred to in the decision in this cause, your petitioner has sought to get the record on

which said supposed judgment for taxes is based before this
106 court to have applied to it the rules of decision above referred to, and that for this purpose he has charged and averred upon the record in each case that no record remains or exists upon which a tax could be ordered or levied by the board of county commissioners in the State of Colorado, and that, by reason of the complaint containing these averments in case No. 2015 having been filed, as it is said, "during the hearing," your petitioner was unable to arrest and have the attention of the supreme court of Colorado. (See amended complaint, filed Feb'y 12th, 1887, and the decision in that cause, No. 2015, 13 Pac. Rep., 914, for these facts.)

That in said case No. 2015 and also in this cause the averments above mentioned have been and are admitted upon the record, as your petitioner believes, and so charges the fact to be.

That case No. 2015 was decided in 1887 by the supreme court of Colorado, 13 Pac. Rep., 913, and its facts have become involved in this cause under facts and circumstances which *is* also believed to involve the authority of the judicial power of a State to impair the obligation of a contract or to deny any citizen of the United States equal protection and rights under the amendment to the constitution above quoted.

That, as shown by the record and the argument and brief to sustain the injunction in this cause, your petitioner rested his cause upon the invalidity of the judgment for taxes and the other equities involved, to wit: multiplicity of suits, insolvency of defendants, and the peculiar and singular value of a stock brand under the laws of Colorado.

107 In answer to these equities in the complaint defendant answered by pleas of, 1st, *res adjudicata*, and, 2nd, former action pending. After filing this answer by the defendants, under sec. 130, Code of Colo., your petitioner was entitled to five days' notice of the motion to dissolve the injunction. That answer was filed on July 25th, 1887, and your petitioner was noticed on July 19th for a hearing at Aspen, Colorado, on July 26th of the same month. Your petitioner is a citizen of Laramie, in the Territory of Wyoming, one hundred and sixty miles from Denver, Colorado, and Aspen, Colorado, is about 300 miles from Denver, as travel went during the year 1887, and that your petitioner could not safely have gone to trial upon the issues as tendered by said pleas at Aspen, Colorado, without at least the notice required by law; that various objections existed and were made to going into any hearing where those pleas were to be heard in vacation (pp. 30 and 38, argument and brief filed in said cause); that at the beginning of the hearing, before the defendant opened his motion, your petitioner settled the status of the case, and the said pleas were excluded from the hearing, and the defendant in effect assented to the exclusion of said pleas (folios 21, 22 of abstract); that said pleas were excluded upon a clear, distinct understanding and in effect under and by the advice of counsel of both parties, as the record shows (folios 21, 22 of abstract), and that therefore your petitioner charges under a contract

or understanding made in open court and nowhere denied in the record. The proceedure in the cause was established under the doctrine of consent makes law in such cases; that the doc-
108 trine consent makes law was an existing and established doctrine in Colorado on July 26th and 27th, 1887. Wilson *v.* McCoy, 8 Colo., 335, 339; Smith *v.* People, 1 Colo., 121; Law *v.* Brinker, 6 Colo., 555; Colorado Springs *v.* Hopkins, 5 Colo., 206; Gordon *v.* Darnell, 5 Colo., 302; Martin *v.* Force, 3 Colo., 199; Patten *v.* Coen, etc., Co., 3 Colo., 265; Phelps *v.* Spruance, 1 Colo., 414; Piela *v.* People, 6 Colo., 343; Hoppie *v.* Best, 4 Colo., 555; Wasson *v.* Dyer, 3 Colo., 198.

These and other decisions of the supreme court of Colorado show that the English rule of decision, "Consent makes law," is fully upheld and adhered to, and we call particular attention to Wilson *v.* McCoy, *supra*, as carrying the doctrine to the extremity of applying it to an appellee and making it necessary for him to reserve exceptions and preserve these in the record.

That, from the circumstances of the case and under the law of Colorado as above indicated, your petitioner entered into the understanding aforesaid and conducted his cause accordingly.

Your petitioner further represents that, under the existing laws of Colorado on July 26th and 27th, 1887, the rule of decision was that a court of review will only consider those questions submitted to a trial court for its consideration.

That, being advised, and firmly believing the law of Colorado to be as above indicated, your petitioner entrusted his cause for rendition of justice according to those known and established rules of procedure, and that the overlooking and denial of those rules in this cause hath greatly damaged your petitioner, and that he is forced to conceive and therefore charge to this honorable
109 judge that the said contract under which he submitted this cause hath been impaired and denied, and that legal and uniform justice and right hath been denied him in this, to wit: Said pleas and issues tendered as aforesaid and withdrawn and excluded as aforesaid have, by the ruling of the supreme court of Colorado, sitting as a court of review, been brought into the cause for a hearing for the first time, and have by it been considered and adjudicated for the first time. Said pleas and issue tendered were passed upon or considered, and that by reason of this your petitioner charges he has not been heard according to due process of law or the law of the land, and that the hearing adjudged in this cause to be a former adjudication was a hearing in vacation, before a judge at chambers, upon an interlocutory motion, and that this hearing is adjudged to be *res adjudicata*. Such hearing cannot be a full and final hearing. Glass *v.* Clark, 41 Ga., 544; 2 High, Inj., 1586.

Your petitioner further represents that, under the law of Colorado as it existed July 26th, 1887, the litigating party had the right to amend defective pleadings after objection made to them and an adjudication that such pleadings were defective in the first in-

stance, and that in this cause this right has been denied your petitioner.

Your petitioner further represents that in the original complaint in said cause (2015) certain allegations were made, and that these allegations were changed and modified by an amended complaint filed on February 12th, 1887, and that your petitioner understands and believes that said allegations so changed and modified as aforesaid, nevertheless, are *res adjudicata* facts, and that these *res*
110 *adjudicata* facts are not merely rules of evidence, but furnish an active enforceable judgment before an inferior statutory tribunal; that said facts show a lawful and valid judgment for taxes upon which final process may issue conforming to the judgment and susceptible of enforcement, and that upon said facts a valid assessment and levy of taxes is shown.

Wherefore, for the above specifications and for other reasons shown by the record and hitherto discussed before said supreme court, your petitioner humbly prays for a writ of error allowing him to remove this cause unto the Supreme Court of the United States, and also for a supersedeas staying said judgment until the questions involved have been finally passed upon by the Supreme Court of the United States; and your petitioner will ever pray.

L. C. ROCKWELL,
JOHN A. COULTER, &
W. T. HUGHES,
Attorneys for Ora Haley.

111 [Endorsed:] 2098. Lewis H. Breeze *vs.* Ora Haley. Petition for supersedeas. Filed in supreme court Jun- 16, 1888. James A. Miller, clerk.

STATE OF COLORADO, } ss:
Supreme Court, }

I am of the opinion that the State court has decided no question in this case which is cognizable on writ of error to the Supreme Court of the United States, and for this reason decline to allow a writ of error.

June 16th, 1888.

WM. E. BECK,
Chief Justice Supreme Court of Colorado.

112 *Writ of Error to — Court U. S., District of Colorado.*

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

The President of the United States to the judge of the supreme court of the State of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, between

Lewis H. Breeze, treasurer of Routt county, Colorado, and Ora Haley, a manifest error hath happened, to the great damage of the said Ora Haley, as by his complaint appears, he having been denied a right claimed by him under the authority of the Constitution of the United States, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Samuel F. Miller, acting Justice of the Supreme Court of the United States, this 21 day of June, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the 112th year.

Seal United States Circuit Court, District of Colorado.

WILLIAM A. WILLARD, *Clerk.*
By F. W. TUPPER, *Deputy Clerk.*

Allowed by—
SAM. F. MILLER,
Justice Sup. Court United States.

113 *Return.*

THE UNITED STATES OF AMERICA, }
State of Colorado, } *ss:*

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same, as designated in my certificate thereto affixed.

Witness my hand and the seal of said supreme court, at Denver, in said district, this 25 day of June, A. D. 1888.

[Seal Supreme Court, State of Colorado.]

JAMES A. MILLER, *Clerk.*

114 *Citation, U. S. — Court.*

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The United States of America to Lewis H. Breeze, treasurer of Routt county, Colorado, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at

Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Colorado, wherein Ora Haley is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam. F. Miller, justice of the Supreme Court of the United States, this 28 day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

SAM. F. MILLER, *Judge.*

115 [Endorsed:] Gen. No., —. — court of the United States, district of Colorado. Ora Haley, plaintiff in error, *vs.* Lewis H. Breeze, defendant in error. Citation. Filed in — court of the U. S. this — day of ——, A. D. 18—. —— ——, clerk, by —— ——, deputy clerk. —— ——, attorney for plaintiff in error.

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

On this seventh day of July, A. D. 1888, personally appeared Frank A. Hinman before me, the subscriber, a clerk of the district court of the 9th judicial district of Colorado, and makes oath that he delivered a true copy of the within citation to Lewis H. Breeze, treasurer of Routt county, State of Colorado, at and in said Routt county, on the seventh day of July, A. D. 1888.

FRANK A. HINMAN.

Sworn to and subscribed before me this 7th day of July, A. D. 1888.

{ Seal of District Court, Routt County, Colorado, 9th Judicial District. }

R. G. WALLACE, *Clerk,*
By —— ——, *Deputy Clerk.*

116 In the Supreme Court of the United States of America.

ORA HALEY, Plaintiff in Error,
vs.
LOUIS H. BREEZE, Defendant in Error. } Assignment of Errors.

And now comes Ora Haley, the plaintiff in error, by L. C. Rockwell & W. T. Hughes, and say- there is manifest error in the above record, and for cause say-:

The supreme court of the State of Colorado erred in the following particulars, to wit:

1. By peremptorily dismissing the cause before it had been fully tried in a *nisi prius* court.

2. By peremptorily dismissing the cause before it had been finally tried in a *nisi prius* court.

3. By peremptorily dismissing the cause before it was ever tried in a *nisi prius* court.

4. By peremptorily dismissing the cause and depriving
117 the plaintiff in error of a trial or hearing in a *nisi prius* court.

5. By peremptorily dismissing the cause and by this means denying plaintiff in error an opportunity to be heard upon regular allegations or to produce and offer testimony and to be heard in a *nisi prius* court.

6. By peremptorily dismissing the cause and holding an interlocutory hearing in vacation before a judge at chambers was a full, final, real, and fair trial of the cause.

7. By holding that an interlocutory hearing in vacation before a judge at chambers upon a motion to dissolve an injunction, which was limited to the equities charged in the complaint and denied in the answer and which issues were and only can be supported by affidavits, is a full, final, real, and fair trial.

8. By trying the weight and effect of certain pleas which had never been tried or passed upon in a *nisi prius* court and which could only be first tried and passed upon in a *nisi prius* court.

9. By declaring and holding pleas of new and affirmative matter excluded by the *nisi prius* judge, at chambers, at an interlocutory hearing, by consent of parties (fol. 262), could for the first time be tried and passed upon by "a court of appellate jurisdiction only."

118 10. By holding that pleas of *res adjudicata* and former action pending are not pleas of new and affirmative matter under the Code of Colorado.

11. By holding a plea of *res adjudicata* was pleaded and before the court when no such plea was pleaded or was before the court (the plea, fols. 46–49; the findings, fol. 290; declared in the opinion, fol. 295).

12. By holding the last above-mentioned plea contained copies of a complaint (the complaint, fols. 106–160), and of a judgment holding certain taxes valid (fol. 290—see this judgment, 10 Colo. Report, 13, which whas only a judgment dismissing the cause), and of other steps and proceedings where, by reference to the plea itself, it shows it contains a copy of nothing (fols. 46–49).

13. By holding a judgment plead by copy which was not so plead and which does not exist to be so plead or that can be pleaded in any other way.

14. By holding that consent of parties (fol. 262) cannot make law as to the exclusion of the pleas of *res adjudicata* and former action pending from an interlocutory hearing upon a motion to dissolve an injunction in vacation before a judge at chambers. (See opinion of Judges Beck & Elbert.)

119 15. By holding that consent to the exclusion of the pleas last above mentioned from the hearing last above mentioned, after once given to induce and persuade entrance into a hearing in vacation to dissolve an injunction before the judge at chambers, where the requisite notice (sec. 130, Code of Colo., and dates men-

tioned in next error assigned) had not been given, can, after the hearing is entered into and after the position of plaintiff in error had been changed, be recalled and rescinded.

16. By holding the pleas last above mentioned untraversed and admitted upon record by the pleadings when the record shows the contrary. (July 25th, answer containing the pleas filed, fol. 52. July 26th, demurrer to these pleas filed, fol. 270–272. The hearing began on the latter date.)

17. By holding a plea of *res adjudicata* was plead and set forth by regular allegations and containing copies of pleadings and of the record, when the contrary appears from the record, fols. 46–49.

18. By convening under the State constitution (sec. 1, art. VI) as "a court of appellate jurisdiction only," and afterward exceeding these powers and sitting and determining a matter for the first time as only a *nisi prius* court can, and afterward peremptorily dismissing the cause without granting leave to amend the complaint, to which no objections was made in the *nisi prius* court by any one.

120 19. By usurping the functions of a *nisi prius* court as set forth in the 8th and 18th assignments above.

20. By usurping legislative authority and changing the well-established law of Colorado after a cause in litigation had been framed and directed according to various decisions of the State, as specified in the 9th, 10th, 14th, & 15 assignments of error above specified, and denying that the pleas above specified were new and affirmative matter. (See Bk. U. S. — Berkele, 1 How., 135, 151, sec. 56, p. 111, Code Colo., 1887.)

21. By a usurpation of the rights of parties to present such allegations and issues to the judicial power as they choose for judgment, and of the duties of a ministerial officer or clerk to make of record such allegations and issues, and to present these to the judicial power as a record within and upon which it must give judgment. (See 9th, 14th, 15th, 16th, & 17 assignments of error above.)

22. By changing the laws of the State of Colorado existing on July 27th, 1888, and after this cause was placed upon and presented by a record in these particulars, to wit:

1st. By denying consent makes law in presenting and withdrawing allegations;

2nd. By reviewing a formal proceeding to which no exception was taken (fol. 262), and which was not assigned for error (fol. 61–69, assignment of errors); and

3rd. By holding that evidence offered at a hearing and
121 excluded by a judge (fol. 263) was nevertheless admitted and considered (fol. 291); and

4th. That evidence so excluded for incompetency was nevertheless admitted and was competent.

23. By holding that the parties had a trial (see 1–9, assignments of error above), and introduced proofs (fol. 291), when the record shows the contrary (fols. 262–262).

24. The judgment for taxes is void, for the reason there is no valuation of property (fols. 6–8), and because there is no description

of lands. (Tilton *vs.* R. R. Co., 3 Sawyer, 22; Woods *vs.* Freeman, 1 Wall, 398.)

25. No notice of the meeting of the board of equalization was given (fol. 11; denied on information and belief, fol. 39, the only proof was excluded affidavits, fols. 263, 267).

26. The supreme court of Colorado has no jurisdiction under the State constitution of appeals from judgmnet not made and entered by a court.

27. The supreme court of Colorado has no jurisdiction of appeals from interlocutory orders made by a judge of chambers.

For the above reasons plaintiff in error prays that said cause be reversed and remanded.

By L. C. ROCKWELL &
W. T. HUGHES,
Att'ys for Plaintiff in Error.

[Endorsed:] Ora Haley, plaintiff in error, *vs.* Lewis H. Breeze, defendant in error. Assignment of errors.

Endorsed on cover: Case No. 13267. Colorado supreme court. No. 211. Ora Haley, plaintiff in error, *vs.* Lewis H. Breeze, treasurer of Routt county, Colorado. Filed October 11, 1888.

Office Supreme Court U. S.
FILED.
JAN 11 1892
JAMES H. McKENNEY,
CLERK.

RECORD, CASE No. 13,267.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 211.

ORA HALEY, PLAINTIFF IN ERROR,

vs.

LEWIS H. BREEZE, TREASURER OF ROUTT COUNTY, COLORADO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

ARGUMENT OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

It should be remembered that the District Court of Clear Creek County (in 1886 and 1887), Act of January 30, 1885, Sess. Laws 1885, p. 177, met only in December and June. It did not meet in February, 1887, at Golden, the county seat of Jefferson County, nor in Clear Creek County in that month.

Out of these facts we gather the exact nature of the proceeding, which the Court declared was *res adjudicata.*

The second case, 11 Colo. 351, is not less plain; if it is likewise noted and remembered that the Court in Pitkin County met in January, May and November, 1887, Act of March 24, 1887, Sess. Laws 1887, p. 321, which also redistricted the State, and changed Routt County from the First to the newly created Ninth Judicial District. The opinion mentions the second application to a different judge, and this statute explains how that came about. The second application for an injunction to a different judge was proper, and ought to have been so made. In each case it was made to the Judge who presided over the District to which Routt County belonged, and if the opinion had mentioned this, it would not mislead.

On July 1, 1887, Haley, plaintiff in error, applied to the Judge of the Ninth Judicial District, at *Chambers, and in vacation*, at Aspen, Colorado, for an *ex parte* injunction to restrain Breeze, defendant in error, Treasurer of Routt County, in that District, from selling property to pay an alleged tax. Among the principal grounds for obtaining the injunction was, there was no valid assessment of any property; that the purported assessment roll made no description of lands whatever, except as follows: "Six ¼ sections," no section, township or range being given; and that said assessment roll consisted of a jumble of numerals to which were associated no words, signs or characters to indicate what they stood for (p. 1, Record), and that no notice of the meeting of the Board of Equalization was given (p. 2, Record). This complaint was duly verified. Upon these, among other equities, the injunction issued, restraining Breeze from selling property to pay an alleged tax. On July 25th, Breeze appeared for the first time and filed his answer, among other things, and admitted that no assessment roll was made, except one made by the *Assessor* (p. 6, Record), and denied, *upon information and belief*, that any notice was given of the meeting of the Board of Equalization, and moved the Judge, *at chambers, and still in vacation*, for a dissolution of the *ex parte, ad interim* injunction. This was under Section 130, Code, which also allowed Haley five days' notice *after filing answer*. Without five days' notice *after* filing answer, or any notice *after* filing answer, Haley appeared, on July 26th, and immediately, and on this day, demurred to the anawer, both generally and specifically, and denied its sufficiency as an answer (p. 46, Record). A notice had been given *prior* to filing the answer for a hearing on the 26th (p. 15, Record). Upon the 26th, Haley appeared and proceeded, as a first step, to determine what was before the Court for hearing. The very first step was a representation to the Court that the pleas of *res adjudicata* and former action pending could not be heard at this hearing. The parties were remote from home (as is stated at p. 60, Record), and the appearance was without notice *after* answer filed. Such being the situation, Haley moved for the exclusion of the affirmative pleas, and to the exclusion of these Breeze assented *expressly;* he took no exception (p. 44, Record, Amend. Bill of Ex.); and upon this motion and this *express assent*, unexcepted

to, these pleas were excluded (p. 44, Record); and that all evidence tending to prove these excluded pleas was excluded as incompetent by the trial Judge (p. 45, Record). The *affirmative pleas were thus laid out of the case*, and carried with them the *demurrer* filed on the 26th, which was filed aptly and days ahead of practice requirements.

The parties were far from home, and Haley was without tangible evidence to meet the affirmative pleas just filed without notice *after* them; and the situation being so, the initial step of Haley was to determine the issues, and see if a hearing could be had at this trip (p. 60, Record, Petition).

The principal equities, the assessment roll and the want of notice, being admitted, and the pleas being excluded, there was nothing of consequence to try, and with the record standing so, upon it, and the pleas excluded, Haley signified his willingness to proceed, and upon this understanding the hearing commenced, and was conducted by Haley and the Judge.

After this exclusion of the pleas, naturally objection was promptly made to all evidence tending to prove these excluded pleas; and these objections were as promptly sustained, with explicit statements from the Judge that he would not consider the pleas, nor any evidence competent to sustain them at this hearing in vacation (p. 45, Record, "Amend. Bill of Ex.")

After the hearing, upon the admitted equities, the Judge refused to dissolve the injunction, and from this *interlocutory order in vacation*, Breeze appealed to the Supreme Court of the State. In the Supreme Court *no error was assigned* to the exclusion of the pleas, nor the refusal to consider the evidence competent (pp. 12-13, Record), yet the Court assumed and declared the contrary.

The cause was heard in the Supreme Court, and not only was the exclusion of the pleas declared error, notwithstanding it was done by consent, and to dispose of the demurrer (p. 46, Rec.), and to secure a hearing for convenience and without notice after answer filed, *and no exception was taken and no error was assigned.* Yet the Court finds the contrary.

The Supreme Court, "a Court of appellate jurisdiction only," not only decided that the exclusion of the pleas was error, but *peremptorily* ordered the cause *dismissed.* This order was positive, and allowed of no amendments or further hearing or *opportunity* to be *finally heard* upon the *merits*, nor that the cause be disposed of in *any Court*, other than dismissed.

Beyond any question, the Supreme Court recalled the excluded plea of *res adjudicata*, demurred to, as already stated, and upon this plea decided the case (pp. 48–52, Record, Opinion). It acted upon them as only a Court of original jurisdiction could. It first tried those pleas, and the way they tried them is shown in the opinion. From these proceedings the cause is removed upon error to this Court.

ERRORS ASSIGNED.

Various errors are assigned, and chiefly among these relied on is: The plaintiff in error was denied a *full*, *fair*, *real*, *bona fide opportunity* to be *finally* heard upon the *merits* of his cause in a *coram judice*, upon regular allegations, according to the laws of the land, and that the judgment of the Supreme Court was special, arbitrary, and contrary to fundamental principles.

A CORAM JUDICE ESSENTIAL.

At the base of an adjudication lies a *coram judice*. Its requirement is the first and primal rule.

Notes Duchess of Kingston's Case, 2 Sm. L. C., 748, 8th ed.

2 Herm. Estop. and Res. Ad., p. 24.

Consent can not confer jurisdiction; neither can it be usurped. The Constitution of Colorado created the Supreme Court "a Court of appellate jurisdiction only," except as to extraordinary remedies commenced originally in that Court. *Marbury* vs. *Madison* is applicable and in point. Only the questions submitted to the trial Court were removed into the Supreme Court.

Wells' Jurisdic., 66.

Henry vs. *Cuyler*, 17 Johns. N. Y., 469.

McQuade vs. *O'Neil*, 15 Gray, 52; S. C., 97 Am. Dec., 350, and note citing cases.

Under this common-place law, the Court could not inject the plea of *res adjudicata*, and try for a first time and dispose of it, as if the Court were a Court of original jurisdiction.

REGULAR ALLEGATIONS NOT PRESENT.

The plea of *res adjudicata*, which was *first* tried and disposed of by the Supreme Court, consisted of two hundred and fifty-three words—the shortest successful plea of that kind yet recorded. It does not mention a *judgment*, much less *set out a copy of one, as stated in the opinion* (p. 49, Record, 13 Colo., 352). A judgment must be pleaded in such cases.

Hax vs. Leis, 1 Colo., 187.

None was pleaded here, but the Court declared to the contrary. It contains a copy of nothing, nor does it purport to. It does not aver that the judgment is not superseded or remains in full force. We repeat, it does not mention a *judgment* in any way. Only an *opinion* is mentioned, and this is not a judgment.

Houston vs. Williams, 13 Calif., 24, 26, S. C., 73 Am. Dec., 565.

The opinion 11 Colo., 352, judicially states the contents of this plea, and finds it contains the copy of a complaint; twice the

opinion states this, and of an answer and a judgment of all steps and proceedings. The complaint the Court found set out by copy is found at pp. 20-28, of the record, and contains over 5,000 words, official count. Here is the plea (p. 9, Record) the Court found contained the requisite copies :

"The defendant further answering alleges that the assessment and validity of the taxes complained of in this action was and has been fully adjudicated in a suit brought by said plaintiff and against the defendant as Treasurer of Routt County, Colorado, in the District Court of Clear Creek County, Colorado, and taken from said court to the Supreme Court of Colorado, and the *opinion* of the Supreme Court of Colorado, rendered on the *thirtieth* day of *April, A. D. 1887*, holds and decides that the proceedings of the Board of County Commissioners and the Assessor in the assessment of and levy of said taxes were regular and valid, and that the assessment of plaintiff's property by the Assessor of Routt County, for the year 1884, in the manner it was done, caused no injury to plaintiff, and was made in 'substantial compliance with the statute, so that its objects and purposes were sufficiently met,' and that the regularity and validity of said taxes have been fully and finally adjudicated in said cause by the Supreme Court of Colorado, in an action between the same parties upon the same allegations as in the original bill, and upon the same points in issue in said cause, and the former adjudication is a complete bar and estops plaintiff from prosecuting this cause, and that this cause cannot be maintained, and the injunction herein must be dissolved and this cause dismissed."

For manifest reasons the plea is void. The demurrer (p. 46) was well taken, and no doubt would have been so decided in the trial court, the court of original jurisdiction. This demurrer was not tried because the plea was laid out of the case by assent, and this carried the demurrer with it. "The principal carries the incident." How the Court disposed of these facts is shown (p. 53, Record, 11 Colo., 359).

The hearing in vacation was in *July*. Court next convened in *November*, and *in open Court, after notice*, the amended bill of exceptions was prepared (p. 44, Record). This shows Breeze prepared his bill *ex parte*. But this is a digression. The plea was excluded by consent, and, for the lawyer, it is useless to discuss the incident, the demurrer. In Colorado notice of a demurrer was presumed until this was denied. The Court's remarks upon the demurrer were very unfortunate, in the light of the law and practice. The demurrer traversed the plea of *res adjudicata*, and raised issues of law not to this day tried in a trial Court. The plea was excluded by consent (p. 44, Record); yet see the misconceptions of the Court (p. 51, Record, 11 Colo., 356).

In the statement (*supra*) we mention two principal equities admitted. Either of these is enough for an injunction. The answer admits no assessment roll was made, except by the Assessor,

and this is no roll. The Board of Equalization makes and passes on the roll, and affords an opportunity to be heard.

Sec. 2862, Statute (1883).
Miller on the Constitution, 666.

Here was a matter to be made and remain of record; and yet *Breeze denied it on information and belief*. Such a denial is good nowhere, and it is absolutely worthless on a motion to dissolve in vacation

2 High Injunc., Secs. 1471, 1482, 1382.
U. S. vs. Parrott McAllister, 271; S. C., 7 Mor. Min. Rep., 346.
Richardson vs. Lightcap, 52 Miss., 508.
Shricker vs. Field, 9 Ia., 366.

The allegations of no assessment and of no notice of the meeting of the Board of Equalization were clear and positive (pp. 1, 2, Record). (See denials of these,— pp. 6, 7, Record.)

Under such allegations, such denials, and such law, Haley was entitled to an injunction, and to its continuance, as well as *his day in Court, which he never had and could not get.* It is this latter point we call most particular attention to.

The decision informs us, Ch. VII, Code, authorized the proceedings as they took place. We know of no such authorization. If it existed, it can be pointed out. When it is, its antagonism to rules of notation and numeration, common morality and fundamental principles, will be apparent.

The common law is presumed to be the same in each State until the contrary is shown. We are preparing this argument on this assumption. If we are erroneous as to this upon any point or points, attention can be called to it.

In Colorado injunctions issue to restrain tax sales of personal property.

Woodward vs. Ellsworth, 4 Colo., 580.

A slight discrepancy exists between the official report and the record. At p. 48, Record, the decision informs us this was the same litigation previously before the Court. In the official report, 11 Colo., 351, 352, we are likewise informed, but with the exact volume and page added. The antecedent litigation referred to in the official report (11 Colo.) is in 10 Colo., p. 5. We are thus enabled to definitely locate the litigation in the official report.

It is important to know what passes for a former adjudication in the State of Colorado; we will therefore notice this case reported in 10 Colo., p. 5, and made a part of the official report in 11 Colo., 351, 352, by incorporation by reference. An inspection of the case in the 10 Colo. will show that all there was about the case there reported was that "a temporary injunction was ordered; a motion to dissolve injunction was made, and during the hearing, February 12, 1887, an amendment to the complaint was filed alleging that no assessment roll, a tax schedule or list upon which

to found a tax for 1884, was ever made or existed," p. 7. (This was error. The amendment was filed on the 12th, before the hearing commenced; the hearing ended on the 15th. The record shows these facts. This is not material here; however, we will lose no opportunity to correct such a statement, upon which the force and effect of a material pleading was disposed of.) The report shows this amended pleading and allegation was filed, and it will be presumed until the contrary is shown that it was filed by leave of the judge. These facts can be gathered from the report.

By reference to the reports and statutes, it will clearly appear that the Clear Creek County case referred to (10 Colo., p. 5) was never disposed of, except in vacation. The report shows it was heard at Golden, in Jefferson County, February 12, 1887. But this is error as to date. It was a *Clear Creek County case*, and must be heard at Georgetown. Yet, it was heard in *Golden*, in the month of *February*,— a month there was *no District Court in Golden*. And the statute shows that the Court met in *Clear Creek County* only in *December* and *June*. From this groundwork, we see that the only hearing the Clear Creek County case ever had was on a motion to dissolve in vacation, and hence it stands, as to *res adjudicata*, exactly as the case at bar does. If the case at bar is an adjudication, then so is the case in 10 Colo., p. 5; and if one is not, then neither is the other. We assume that neither is, for reasons already stated; and yet, in the opinion in this cause (pp. 48, 53), we are told that the cause was adjudicated in the case 10 Colo., p. 5, and that for this reason the new and additional facts presented in the case at bar could not be considered by the Court. The case in 10 Colo., p. 5, was passed upon by the Supreme Court Commission, which merely directed that the order refusing to dissolve the injunction be reversed and that the cause be remanded. Nothing else was adjudicated or passed upon by the Commission. Its judgment was the extreme adverse judgment which could be made or entered against Haley in those proceedings; and yet after this the regular Court changed this, and, on a new and additional motion, *peremptorily ordered that the cause be dismissed without leave to amend and other rights.*

It is presumed the laws in each jurisdiction are alike, unless the contrary is shown. We understand that every jurisdiction will not *peremptorily dismiss a bill, even in open Court, without leave to amend.* Involving these rights, the proceedings of the Court were curious, strained and captious; for the things discussed and acted upon are not for consideration on motions to dissolve in vacation. The opinion in this cause (pp. 48, 53, Record, 351, 362, 11 Colo.) is one of the most incomprehensible that could be presented to the legal mind, in view of the facts and the law governing the case. It is simply astounding that a Court possessing the ability to determine what constitutes a plea of *res adjudicata* should, without any foundation of fact whatever, declare that the *plea found in this record contains the essential elements.* And not less astonishing is the liberty that is taken with the facts and

the law governing this case, all of which are actually turned inside out. The reasons assigned for the judgment in this cause can not be defended; they are untenable in any view and wholly indefensible.

Assuming the law of Colorado to be like that of other jurisdictions,—and we believe it is upon the points involved, and therefore so represent it to be,—nearly every statement and every deduction made in the opinion is subversive of well-settled law. Many statements of fact made in the opinion are without any foundation whatever,—they are wholly unjustified; and the denial in the opinion of the patent prominent fact shown upon the record must thoroughly destroy the proceedings when judged by fundamental and essential principles of due process of law. A motive is evinced to prevent the case ever being tried in open Court. In the second case, the Court refused to look at and consider the facts, because *an order containing the injunction was reversed.*

Nearly every paragraph in the complaint shows upon its face something special, arbitrary and contrary to fundamental principles.

FINALLY,

Out of the above premises, we submit the following points:

First—The proceedings were *coram non judice* as to everything not presented by the record, and everything not passed upon by the trial court and which was excluded by him; that "Courts of appellate jurisdiction only" have a limited jurisdiction.

Second—Regular allegations were not presented, the record was not pleaded and proved. The evidence offered was incompetent and void after the plea was excluded, notwithstanding the opinion.

Third—The judgment was not upon its merits. An order denying the dissolution of an injuction by a judge at Chambers, upon a motion to dissolve in vacation, limited to the equities and their denials, is not a judgment on the merits of the case. Judgments must be on their merits to amount to *res adjudicata.*

Fourth—The judgment was not final; the order denying the injunction by the judge at Chambers was not a final judgment, but was interlocutory. Judgments must be final to amount to *res adjudicata.*

Fifth—The absence of regular, traversable and material allegations in the plea. The plea did not mention a judgment; it contained a copy of nothing, notwithstanding the opinion to the contrary.

Sixth—The record was not equitably construed, the estoppel was not strictly taken. The judge did not intend the hearing at Chambers to be final; he said and held so.

Seventh—That an adjudication must be intended to be final, at least by the judge trying it, before it is such. This was not the case but the contrary, and the record shows it.

Eighth—An estoppel rests on a record, not on an opinion nor a dictum. *Expressio unius est exclusio alterius* applies here.

Ninth—Right of parties to withdraw issues denied. *Submitted.*

Tenth—The division of state power involved. (A tax must rest upon a tax, tax record made by the right officials, and cannot be enforced by process from an estoppel arising in judicial proceedings) The opinion denies this.

Eleventh—The opinion has a retrospective effect in various particulars, and abrogated, well-settled and essential rules in procedure, and upon which the case was adjusted and depended for a real, *bona fide* opportunity to be heard upon the matters presented by regular allegations. Retrospective changes of minor and subordinate rules are sometimes destructive of an opportunity to be heard. Looking at the record and the repugnant and tortuous reasoning of the opinion, we submit this.

Twelfth—An estoppel against an estoppel sets the whole matter at large. (Allegations admitting a tax due may be evidenciary, but not a record upon which process may issue.) Averring no record to sustain a tax and this admitted, is also an estoppel and frees the former estoppel. All this is denial. Filing an amended complaint denying any tax foundation or record for a tax to rest on and this being admitted, is ample ground for relief and protection, and negatives that the case, 10 Colo., 5, amounts to *res adjudicata.*

The proceedings in this case show that this cause was indefensibly defeated and denied a real, full, *bona fide* hearing in a *coram judice.* The treatment of the plea was a denial of notation and numeration even, and beyond this of more, of everything. We could name nothing more ruinous in the administration of justice than the treatment and disposition of that plea. The practice throughout the case was a denial of elemental principles and of fundamental guarantees. The record submitted called for a very different opinion to the one filed. By the means this case was defeated any case may be. A justification of this case will amount to an emasculation of due process of law of all protective force.

Respectfully submitted.

W. T. HUGHES.

Office Supreme Court U. S.
FILED.
MAR 15 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM OF 1891.

No. 211.

HALEY *vs.* BREEZE.

And now comes plaintiff in error and moves the Court to attach for contempt Lewis H. Breeze and Samuel H. Wilson for disobedience to the supersedeas issued and served in this cause, as is shown and set forth in the affidavit herewith filed.

By W. T. HUGHES,
Attorney for Plaintiff in Error.

Received a copy of the above-annexed affidavit and motion this March 10, 1892.

D. E. PARKS,
Attorney for Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM OF 1891.

HALEY
vs.
BREEZE. } No. 211.

John F. Tourtellotte deposes and says he is an agent of the Haley Live Stock Company, and is well acquainted with

the litigation arising out of the claims of Routt county against Ora Haley for taxes for the year 1884.

That said taxes were not and never have been paid by said Ora Haley, and that their validity is in dispute, and that nine distinct suits are now pending in the State courts of the State of Colorado, involving the validity of the claims of said county to said taxes.

That the only moneys paid on said claims of tax were paid by the Haley Live Stock Company in August, 1888, and for which said company have established judgments against those committing trespasses on said company's property under claims and pretenses that they were collecting a just and valid tax.

That after this cause was removed into this Court and a supersedeas ordered and a bond given and said supersedeas was regularly issued, and after the same had been served upon defendant Breeze, that both he and Samuel H. Wilson, acting in concert and concurrently together, proceeded and seized property belonging to the Haley Live Stock Company and forced it to pay them more than twelve thousand dollars ($12,000), which they pretended was due them and said county of Routt for taxes from Ora Haley for said year 1884, and that said company paid said sum under protest and after the issuance and service of a supersedeas in this cause.

That afterward it was adjudged in the cause mentioned in the motion to dismiss, and which cause is now pending on the docket of this Court upon the appeal of said Wilson against said company, that no tax was due from said Haley to said county for the year 1884, and that said Breeze and said Wilson were trespassers in the premises, and that they were convicted as such.

That several suits are now pending in the various courts of the State of Colorado involving the issue of the validity of said taxes, and that the determination of this issue is one of great importance to said Ora Haley, and that, for the purpose of determining this, he instituted three distinct suits in the State

courts, which causes were successively dismissed by the State courts before any final hearing or disposition of the same.

That after the issuance and service of the supersedeas from this Court in this cause on said Breeze, that he with others combined, confederated, and armed themselves with fire-arms and weapons and seized and herded together several hundred head of cattle and held the same until the owners thereof advanced certain sums to satisfy their demands, and that it was by these means and none other that said moneys were extorted from the payers which are referred to in the motion to dismiss herein filed.

That affiant believes, has reason to believe, and therefore charges the fact to be, that no taxes were due by said Ora Haley to said Routt county for the year 1884, and that if a full, fair, and final hearing had been afforded by the State courts, that the same would have been so declared, as it was declared in the United States circuit court in the case mentioned in the motion to dismiss.

Further affiant saith not.

UNITED STATES OF AMERICA,
District of Colorado, State of Colorado,
County of Arapahoe.

John F. Tourtellotte deposes and says he has read the above affidavit and that he knows the contents therein, and that the same is true of his own knowledge except those matters and things stated on information and belief, and as to these he believes them to be true.

By JOHN F. TOURTELLOTTE.

Sworn to before me this March 10, 1892, at Denver, in said district.

[SEAL.]

FRANCIS W. TUPPER, *Clerk*,
By CHARLES W. BISHOP,
Deputy Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 211.

ORA HALEY, PLAINTIFF IN ERROR,

vs.

LEWIS H. BREEZE, TREASURER, &c.

Motion to Dismiss and Statement and Brief on Motion to Dismiss.

DANIEL E. PARKS,
Attorney for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 211.

ORA HALEY, PLAINTIFF IN ERROR,

vs.

LEWIS H. BREEZE, TREASURER, &c.

Motion to Dismiss and Statement and Brief on Motion to Dismiss.

UNITED STATES OF AMERICA, *ss.*:

IN THE SUPREME COURT OF THE UNITED STATES, OF THE OCTOBER TERM, A. D. 1891.

ORA HALEY, *Plaintiff in Error*,
vs.
LEWIS H. BREEZE, *Treasurer of Routt County, Colorado, Defendant in Error.*
} Term No., 211. Motion to Dismiss Cause.

In error to supreme court of Colorado.

And now comes the defendant in error, Lewis H. Breeze, as late treasurer of the county of Routt, Colorado, and moves the court to dismiss this cause and the writ of error therein

at the cost of the plaintiff in error upon the following grounds:

I.

This cause and the matters and things therein involved no questions under the Constitution or laws of the United States of America.

II.

The taxes of A. D. 1884, complained of, the validity and legality of which are involved in this action under the constitution and laws of the State of Colorado, have been fully paid, satisfied, and discharged by the said plaintiff in error, as appears by the record of the case of S. D. Wilson, treasurer of Routt county, Colorado, plaintiff in error, against The Haley Live Stock Company, defendant in error, docketed as No. 952, October term, A. D. 1891, in and now pending and undetermined in this Court.

DAN'L E. PARKS,
Attorney for Defendant in Error, Denver, Colo.

UNITED STATES OF AMERICA, *ss:*

IN THE SUPREME COURT OF THE UNITED STATES, OF THE OCTOBER TERM, A. D. 1891.

ORA HALEY, *Plaintiff in Error,* *vs.* LEWIS H. BREEZE, *Treasurer of Routt County, Colorado, Defendant in Error.*	No. 211. Relation on Motion to Dismiss Cause.

In error to supreme court of Colorado.

And now comes the defendant in error, Lewis H. Breeze, by Daniel E. Parks, his attorney and counsel, and, suggesting to the Court, gives the Court to know and understand as follows:

I.

That he, the said defendant in error, is now out of office and is no longer such treasurer, but that he has been succeeded as such and in such office of county treasurer by Samuel D. Wilson, Esq., who is now such treasurer and has been such treasurer for the past two years or more.

II.

That after the dissolution of the injunction in this cause by the supreme court of Colorado and on, to wit, the 21st day of August, A. D. 1888, the said Samuel D. Wilson, as such county treasurer of Routt county, Colorado, under and by virtue of his authority as such treasurer under the constitution and laws of the State of Colorado, seized and distrained certain property as the property of said plaintiff in error to make and collect the same taxes which are involved in this action, which taxes were those assessed and levied against said plaintiff in error on the assessment and tax roll of the county of Routt, Colorado, for the year A. D. 1884.

That about the time of such action of seizure and distraint one Kinney, claiming to be the vendee of said plaintiff in error, brought suit in the district court of Arapahoe county, Colorado, for a perpetual injunction against said Wilson as such treasurer, to perpetually enjoin and restrain said Wilson as such treasurer from seizing and selling such property to make such taxes; that such action was successfully defended by said Wilson as such treasurer, and thereafter and on, to wit, said 21st day of August, A. D. 1888, said plaintiff in error fully paid, satisfied, and discharged such taxes, and on such payment and satisfaction said Wilson, as such treasurer, made, executed, and delivered to said Haley a receipt therefor in the words and figures following, to wit:

"YAMPA, ROUTT CO., COLO.,
"*August* 21*st*, 1888.

"Received of Wilson Rankin, for Ora Haley, a certified check of Frank X. Aichier on the German National Bank of Denver, Colorado, for twelve thousand seven hundred and forty-six and $\frac{5}{100}$ dollars ($12,746.05), in full payment of the claim of Routt county, Colorado, against Ora Haley for taxes for the year 1884, interest and costs and expenses of all attempts of the treasurer to collect the same, amounting to the sum of twelve thousand seven hundred and twenty-five and $\frac{52}{100}$ ($12,725.52) dollars; the said certified check being for a larger sum than the amount due, the undersigned treasurer has delivered his check as treasurer to said Rankin, payable to the order of Ora Haley, for the sum of twenty and $\frac{53}{100}$ dollars, being the difference between amount due for said taxes for the year 1884 and the amount of the certified check. This payment, it is understood, is paid in full settlement for taxes of Ora Haley for the year 1884 under protest, and to release cattle now distrained for said taxes.

S. D. WILSON,
Treasurer of Routt Co., Colo.

(This receipt is on page 7 of Supreme Court Transcript of Haley Live Stock Company *vs.* Samuel D. Wilson, The County of Routt, *et al.*, defendants. No. 2341, same Company *vs.* County.)

By reason of which the said taxes so disputed were and now are fully paid, satisfied, and discharged, and the funds paid to discharge the same to said Wilson have long since reached the county treasury of said county of Routt, Colorado, and been applied to the purposes provided by the said constitution and laws of the State of Colorado.

That thereupon said plaintiff in error, through a company organized by him and others, called the Haley Live Stock Company, brought suit against the said Samuel D. Wilson, as such treasurer, and also the county of Routt, in the name of the Board of County Commissioners of the County of Routt, as defendants, in the circuit court of the

United States for the district of Colorado, to recover the said taxes so paid; that said action was tried in said court, and on March 8, A. D. 1890, judgment was rendered against said Wilson, as such treasurer, for such taxes as damages in the sum of $5,266.92, besides costs; that the number of said cause on the docket of said circuit court was and is No. 2340; that thereupon, in due time, form, and manner, the said Wilson, as such treasurer, sued out a writ of error in said cause No. 2340 from the Supreme Court of the United States to said circuit court to review the said judgment in this court, and superseded the judgment in said cause, the Hon. Samuel F. Miller, justice of the Supreme Court of the United States, making by his order the said writ of error a supersedeas and approving the supersedeas bond made for that purpose.

That thereupon, in due time, form, and manner, the record of said cause in error was made, filed, and docketed in this Court at and for the October term, A. D. 1890, and numbered 1519, and the same and said cause thereon in error is now pending and undetermined in this Court and awaiting the action of this Court thereon.

That said cause of Wilson, treasurer, plaintiff in error, *vs.* Haley Live Stock Company, No. 1519, involves the validity of the same tax proceedings which are attempted to be assailed and invalidated in this action, and also the same identical taxes, and no other; that the taxes so paid as aforesaid and sued for in said suit in the circuit court of the United States for Colorado are the same identical taxes involved in this action, and none other; that on inspection of the record in said cause No. 952 in this cause by this Court and an examination of the tax schedules, assessment and tax rolls, etc., etc., in evidence in said action No. 952, and a comparison of the same with those in evidence in this action, it will be seen by this Court that the taxes so paid, the payment of which is evidenced by said receipt, are the same identical taxes and tax proceedings involved in this cause

now here before this Court, and none other; and therefore said action No. 952 and the proceedings fully evidence to this Court the fact that the taxes involved herein, upon the validity of which the plaintiff in error seeks herein to obtain the adjudication of this Court, have been fully paid, satisfied, and discharged, and the remedy, if any, afforded by this action gone and rendered nugatory.

III.

That for the purpose of aiding this Court to readily refer to those parts of the record of said cause No. 952 now pending in this Court, to ascertain the truth of the statements of this suggestion and relation, this defendant in error refers to the following pages of said record: Page 6, the receipt given by said treasurer for said taxes to said Haley, put in evidence in said cause; page 9, Haley's testimony to seizure of property, July 22, 1888, and holding of same until August 21, 1888.

Page 10, Haley's testimony to enforced collection of taxes and his payment of same, and receipt of county treasurer's receipt, and that money was paid by Haley's foreman.

Pages 18 to 25, assessment-rolls showing tax of 1884.

Pages 33, 34, and 35, warrant of county clerk to treasurer to collect tax.

Pages 37 and 38, treasurer's warrant to collect taxes. Exhibit D 3, page 148, Treasurer Wilson's warrant to collect taxes.

Exhibit D 4, page 158, tax schedule. The charge of the court, pages 196, 197, and 198, shows the action was against the county of Routt, the treasurer, and others, to recover taxes.

IV.

In consideration of the premises the defendant in error, Lewis H. Breeze, treasurer, says that inasmuch as such taxes

herein disputed have been fully paid, satisfied, and discharged, that this action and the determination of the matters therein can serve no good purpose, because the determination thereof cannot now avail the plaintiff in error, and hence this cause should be dismissed; that the determination of this cause might prejudice the rights of the county of Routt and said treasurer, Wilson, in said other cause, No. 952, and hence this cause should be dismissed, and the questions of law involved in said other cause, No. 952, being the same as those involved herein, not determined by this cause in advance of the consideration of said cause No. 952 by this Court.

DAN'L E. PARKS,
Attorney for Defendant in Error, Denver, Colo.

UNITED STATES OF AMERICA, *ss:*

IN THE SUPREME COURT OF THE UNITED STATES, OF THE OCTOBER TERM, A. D. 1891.

ORA HALEY, *Plaintiff in Error,*
vs.
LEWIS H. BREEZE, *Treasurer of Routt County, Colorado, Defendant in Error.*

Term No., 211.
Brief on Motion to Dismiss Cause.

In error to supreme court of Colorado.

I.

Replying to the brief of the plaintiff in error herein, the defendant in error rests his case upon the judgment and decision of the supreme court of Colorado, contained in the cause.

We consider the citation of further authorities unnecessary, as this Court is supposed to know some law.

II.

The motion to dismiss, we submit, must prevail, as, 1st, the taxes in dispute have long since been paid and the time of this overworked tribunal should not be occupied in determining *moot questions*, the determination of which can afford no relief against the things complained of nor afford any precedent in other cases; and, again, this cause should not be so treated by this Court as to embarrass this Court in the disposition of the cause of Wilson *vs.* Haley Live Stock Company, No. 952, October term, 1891, nor should this Court determine in this cause the questions involved in that cause.

We rely on the case of Singer Manufacturing Company *vs.* Wright (December term, this Court, 1891), reported in 12 Supreme Court Reporter, 103; Little *vs.* Bowers, 134 U. S., 547.

2d. This cause does not involve a proper Federal question, and hence this Court has no jurisdiction to hear and determine the same, and the motion to dismiss should prevail for this reason.

The decisions of this Court on that question are familiar to the Court and it is unnecessary to take up the time of the Court in arguing the question. We simply refer the Court to the following recent decisions of the Court on the subject:

Tyler *vs.* Cass County, 12 Supreme Court Reporter, 225.

Delaware City & Salem & Philadelphia Boat Navigation Co. *vs.* Reybold, 12 do., 290.

Cheever *vs.* Homer, 12 do., 184.

Hammond *vs.* Johnston, 12 do., 141.

III.

We desire no oral argument of this cause on the merits, nor on the motion to dismiss the writ of error and the cause.

We will not trench on the time of the Court for that purpose, and so we submit the same to the judgment and decision of the Court upon the papers and proceedings in the cause.

DAN'L E. PARKS,

Attorney for Defendant in Error, Denver, Colo.